

November 18, 2008



TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President
Councilmember Roger Berliner
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember George Leventhal
Councilmember Don Praisner
Councilmember Duchy Trachtenberg
Councilmember Phil Andrews



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1 MICHAEL KNAPP: Okay. Good morning, everyone. Welcome to County Council. We
2 begin our morning with an invocation from Rick Price of Churches of Christ, Scientist of
3 Montgomery County. Mr. Price? I ask everyone to please rise.

4 RICK PRICE: Council President, Councilmembers and everyone else, let us pray.
5 Almighty God, we ask for your blessing on the Council, staff and all others involved in the
6 governing of the county. May your wisdom, justice, grace and compassion govern their
7 actions. May you give them the strength and energy to stay alert and engaged during long
8 days and nights of deliberation. May you give them the intelligence to solve the
9 complicated issues and many options. And, finally, may you give them the heart, soul and
10 mind to come up with what is best for the people of this County. Amen.

11
12 MICHAEL KNAPP: Thank you very much. We will now have a presentation, Proclamation
13 in Recognition of the 20th anniversary of Bethesda Cares by Councilmember Berliner.

14 ROGER BERLINER: I think I'm actually going to do this right, this time. I'm going to turn
15 the mic on, we bring it here, we invite my guests up. I want you standing flanking me,
16 towards that way. Okay? To my colleagues, I recently had the pleasure of joining
17 Bethesda Cares for its 20th anniversary celebration and it is as Bethesda Cares is a
18 heart-warming experience because this is an organization that represents the best of what
19 volunteers do. You turned it on?

20 MAN: Excuse me.

21 ROGER BERLINER: You will never be invited back. You'll realize this. This is it, you
22 know.

23 MAN: Excuse me, that's my wife calling from Jerusalem.

24 ROGER BERLINER: Oh, oh, that's important. That's important. Goodness. But your work
25 is important and my colleagues greatly respect your work and to take care of the
26 homeless the way in which you do, it is the best of our faith-based community,
27 government, collaborations and you leverage 450 volunteers with so little and with such
28 great heart. My family had the privilege of joining Bethesda Cares on Thanksgiving and
29 other moments to be with the homeless and to feed the homeless. And it is among the
30 most gratifying experiences that one can have in the government is to be part of what you
31 do. So we are here to thank you, to honor you and to recognize you for the extraordinary
32 contribution that you make to our community and to the cause of helping those who find
33 themselves in homelessness. So, let me read this worthy proclamation although it's... I
34 take off my glasses because I can't see with my glasses. So, here is the County Council of
35 Montgomery County, Maryland proclamation. Whereas homelessness is a serious county-
36 wide problem that requires a creative, cooperative, and immediate response, and whereas
37 Bethesda Cares, Inc., a non-profit private agency founded in 1988 by Bethesda Area
38 Congregations, the County and concerned individuals serves the working poor and
39 homeless in Montgomery County and provides a wide range of critical services with
40 minimal overhead. And whereas Bethesda Cares Inc. provides a variety of services to
41 prevent and ease homelessness such as eviction prevention grants and assistance with
42 utilities to those who are on the verge of homelessness and also makes available an
43 outreach social worker who offers counseling and referrals. And whereas Bethesda Cares



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1 Inc. works with local churches and other community groups to coordinate services to
2 provide lunch six days a week, dinner every Sunday, donated apparel, medical care,
3 assistance with prescription and showers to help meet the needs of the homeless. And
4 whereas Bethesda Cares Inc. is able to offer these services with a small staff and more
5 than 450 volunteers who cook and serve food, sort clothes, provide medical assistance,
6 help with fund-raisers and perform many other services. And whereas Bethesda Cares
7 Inc. working in concert with County Government Agency provides and maintains a true
8 community approach to assisting the homeless. Now, therefore, be it resolved that the
9 County Council of Montgomery, County Maryland hereby recognizes and joins the
10 celebration of the 20th anniversary celebration of Bethesda Cares Inc., and be it further
11 resolved that the County Council take this opportunity to thank all of the dedicated and
12 caring volunteers and community members who have been so vital to the success of
13 Bethesda Cares Inc. and who are an inspirational example of how volunteers can come
14 together to make Montgomery County a better place to live. Signed this 18th day of
15 November in the year 2008, Michael J. Knapp, Council President. How would you like
16 that? I think there are going to be some words, I hope.

17 SUSAN KIRK: Yes.

18 ROGER BERLINER: You, Miss Kirk, is wonderful.

19 SUSAN KIRK: Well, there we go.

20 ROGER BERLINER: Stand here with that.

21 SUSAN KIRK: I will stand here, yes.

22 ROGER BERLINER: You stand here with that.

23 SUSAN KIRK: All right, here we are. First of all, thank you to the Council. Even though our
24 name is Bethesda, we assist in all of your districts with eviction-prevention. Homeless
25 don't have addresses. They have ours. They come from all over. We assist whoever walks
26 in our door and we do eviction-prevention and utility prevention or cut-off prevention to
27 keep people in their homes so that they don't become homeless and come on the street
28 and we assist county-wide. We do all that, as this rather lengthy document says, with a
29 minimum working staff, a very supportive Board of Directors and a lot, a lot of volunteers
30 from the community. So thank you. Thank you, Roger as one of our many volunteers.

31
32 MICHAEL KNAPP: Hold on. Don't everybody go away. ROGER BERLINER: Now, we have
33 to do this. Come a little closer because I'm getting a little bit wider.

34 NEIL GREENBERGER: Can you hold up that proclamation?

35 SUSAN KIRK: Oh, yeah, that would help, wouldn't it? Yes, there we are.

36 NEIL GREENBERGER: We will take a bunch of this so, everybody smile. Smile, we are
37 going to take a few more. Okay, last one. [INDISTINCT] Big smile, everybody.

38 [INDISTINCT] That is great. Thank you.

39
40 MICHAEL KNAPP: Thank you all very much. [INDISTINCT] And our next presentation is
41 proclamation in recognition of November as Pancreatic Cancer Awareness Month by
42 myself. This is actually an interesting one. This was supposed to be a joint proclamation
43 on behalf of the County Executive and myself. Unfortunately, the County Executive



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1 couldn't join us this morning. And I'll be honest, as I looked at the schedule last week and
2 said we're going to this I was like, "Oh, what are we doing with this?" because I know
3 Pancreatic Cancer is such a devastating disease and really has a traumatic impact on
4 those who are diagnosed and the families of those who are diagnosed. And so I wasn't
5 sure exactly, so I started reading through the literature and facing Pancreatic Cancer and
6 it walks through and I think part of the most significant thing that is outlined in the brochure
7 of the Pancreatic Cancer Action Network is the notion of creating hope that there are
8 things that can be done. There are things that need to be done. At that this organization is
9 one that is trying to increase awareness for this devastating disease and create an
10 element of hope. And, so, I thank you all very much for that. And so I want to read through
11 the proclamation but then I think it's going to be very important to hear a little bit from you
12 so you can tell us why we need to pay much more attention to something that is so
13 devastating. So, whereas Pancreatic is one of the most serious, untreatable and
14 aggressive forms of cancer, it's the fourth leading cause of cancer-related deaths of men
15 and women in the United States and takes 80 lives in Montgomery County every year and
16 whereas over 30,000 estimated new cases will be diagnosed with pancreatic cancer this
17 year in the United States with 700 occurring in Maryland and a 99% mortality rate for this
18 disease is the highest of any cancer. And whereas there are currently no definitive, early
19 detection methods and limited treatment options for pancreatic cancer and by the time
20 symptoms present themselves, it is too late for positive prognosis and the average
21 survival after diagnosis is only three to six months. And whereas Pancreatic Cancer does
22 not discriminate by age, gender, or race, only 5% of patients will survive beyond five
23 years. And whereas the pancreatic cancer Action Network, PANCAN, a national advocacy
24 organization for pancreatic cancer patients will promote pancreatic cancer awareness
25 during the month of November in order to educate communities across the country about
26 this disease and the need for research funding, early detection methods, effective
27 treatments and prevention programs. Now, therefore, do we, Isaiah Leggett County
28 Executive, Michael J. Knapp as Council President, hereby, proclaim that the month of
29 November 2008 as Pancreatic Cancer Awareness Month in Montgomery County. We
30 encourage all of our residents to join us in raising public awareness concerning this crucial
31 health issue and extending our support in the battle against pancreatic cancer in our own
32 community and throughout our nation. Signed this day Isaiah Leggett as County
33 Executive, and Michael Knapp, County Council President. I thank you very much for
34 coming to share with us why we have to be paying it the attention that we do. And so I
35 don't even know who...

36 MARY ZAPOR: I'll speak.

37
38 MICHAEL KNAPP: Thank you very much.

39 MARY ZAPOR: Thank you. This is quite an honor. We want to thank all the members of
40 the Council and also Isaiah Leggett for granting us this proclamation. We appreciate it.
41 Pancreatic Cancer is a very deadly disease. Anyone who is diagnosed is facing an uphill
42 climb. We know that going into it. Pancreatic Cancer Action Network has taken numerous
43 steps to try and give patients hope and also to create more awareness. This is one of our



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1 efforts to create more awareness. It has been said that research, the status of research, in
2 the United States right now for Pancreatic Cancer is equivalent to where breast cancer
3 was in the 1930s. We have 70 years of research to make up before we can start,
4 hopefully, before then start seeing a big turnaround in the progress in the course of this
5 disease. All of us here have lost a loved one to pancreatic cancer. And if anyone out there
6 is facing the diagnosis of pancreatic cancer, we hope that you, your family will get
7 involved. If you need free information, Pancreatic Cancer Action Network has a toll-free
8 number, which is 1877-272-6226. And if that is wrong, you can find it on the web site,
9 which is www.pancan.org. That is 18772-PANCAN, P-A-N-C-A-N. That should work if I
10 got the numbers wrong. Each of the councilmembers, we have given you a purple ribbon
11 pin. And, also, this is one of the information sources that PANCAN puts out, which is basic
12 pancreatic cancer information. We have these available at numerous health fairs
13 throughout the region, the whole national capital area. And we're pleased and honored to
14 be here. Thank you so much.

15
16 MICHAEL KNAPP: Thank you so much for coming in. I know it's difficult for each of you to
17 come out and I appreciate very much your taking the time to increase awareness for this
18 disease.

19 MARY ZAPOR: Thank you.

20 NEIL GREENBERGER: Okay. That looks good. Very good. I will take a few more. Smile.
21 One more. Looks good.

22
23 MICHAEL KNAPP: All right. Thank you very much.

24 MARY ZAPOR: Thank you.

25
26 MICHAEL KNAPP: We now turn to general business. Miss Lauer, announcements and
27 acknowledgments?

28 LINDA LAUER: All right, several changes to today's agenda to announce the consent
29 calendar, an additional item for introduction, a special appropriation to the Revenue
30 Authority's capital budget and the CIP amendment and it's on behalf of Montgomery
31 College. It is \$14.5 million for the Takoma Park/Silver Spring West Campus garage. A
32 public hearing is scheduled for December 9th. In the legislative session this morning, we
33 are adding an introduction of a bill. That's Bill 35-08, Motor Vehicles and Traffic
34 Miscellaneous Provisions regarding Funding for Public Safety Programs. That public
35 hearing is scheduled for December 9th. And then, this afternoon, you have a public
36 hearing. We are going to just postpone action on it. It is the item on the Department of Fire
37 and Rescue Services. An issue's come up. Public Safety wants to take it back under
38 consideration. So that is scheduled for November 20th and then we'll reschedule action
39 later. We did receive a petition. One opposing the ambulance fee. So that is before us.
40 Thank you.

41
42 MICHAEL KNAPP: Okay. I know. Thank you very much. I would just note at the outset
43 that we do have a fairly full agenda today and, so, we will probably be here for a while. I



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1 would also note that Councilmember Ervin is absent for on other Council business but he
2 will be joining us later this morning. Also, that on Thursday evening that the County
3 Council is co-hosting with the County Executive a reception for the County State
4 Delegation that is... Where is it? Does anyone know?

5 LINDA LAUER: The Executive Office building.

6
7 MICHAEL KNAPP: Do we know? Where is the reception you're hosting tomorrow evening
8 or on Thursday evening?

9 LINDA LAUER: It is on the Executive Office building on the first floor.

10
11 MICHAEL KNAPP: Okay. Okay, in the Executive Office building. Okay, on the second
12 floor or on the first floor. Okay. Madame Clerk, do we have any minutes to approve?

13 LINDA LAUER: We have the minutes of October 21st for approval.

14
15 MICHAEL KNAPP: Is there a motion?

16 DUCHY TRACHTENBERG: I move.

17
18 MICHAEL KNAPP: Moved by Councilmember Trachtenberg. Is there a second?

19 NANCY FLOREEN: Second.

20
21 MICHAEL KNAPP: Seconded by Councilmember Floreen. Thank you, everyone. Any
22 discussion on the minutes? Seeing none, all in support indicate by raising your hand.
23 Thank you very much. That's unanimous among those present. Consent Calendar, is
24 there a motion?

25 ROGER BERLINER: So move.

26
27 MICHAEL KNAPP: Moved by Councilmember Berliner. Is there a second? Anyone?
28 Anyone?

29 DUCHY TRACHTENBERG: Seconded.

30
31 MICHAEL KNAPP: Seconded by Councilmember Trachtenberg. Is there a discussion on
32 the Consent Calendar? Okay. Seeing none, all in support indicate by raising your hand.
33 That is unanimous among those present. Thank you. We now turn to Legislative Session
34 Day number 7, approval of the legislative journal. Madam Clerk?

35 LINDA LAUER: You have the journal of October 21st for approval.

36
37 MICHAEL KNAPP: I appreciate that. Anyone wants to second Mr. Leventhal's motion?

38 NANCY FLOREEN: I'm good with it.

39
40 MICHAEL KNAPP: Good. Thank you, Councilmember Floreen. Is there a discussion on
41 the legislative journal? Seeing none, all in support indicate by raising your hand. That is
42 also unanimous. Mr. Elrich? That is also unanimous among those present. We have a bill
43 for introduction that was just indicated by Miss Lauer. That is Bill 35-08, Motor Vehicles



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1 and Traffic Miscellaneous Provisions, Funding for Public Safety programs sponsored by
2 the Council Vice-President, Council President Knapp, Councilmembers Ervin,
3 Trachtenberg and Floreen, Council Vice-President Andrews.

4 PHIL ANDREWS: Thank you, Council President Knapp, and I want to thank my co-
5 sponsors as well. The Speed Camera Program and the Red Light Camera Programs are
6 programs that are important for traffic safety in Montgomery County and they are working
7 well. Results show that they actually have resulted in a decline in case of red light
8 cameras, in collisions at intersections and, in speed cameras, in reductions in speeding
9 where cameras are posted. And it is clear to those of us as we drive around the County
10 that people are slowing down where there are speed cameras. Speed cameras are
11 located--must be located under the state law--on streets where the speed limit is 35 or
12 less or in school zones and they may not be put in certain parts of the county such as on
13 major highways. The legislature has required that the County Council report back to the
14 legislature by the end of 2009 on the program on its effectiveness, on its implementation
15 and how funds are being spent. This bill would dedicate funds from the Speed Camera
16 and the Red Light Camera Programs two specific purposes that are closely related to
17 traffic safety. It would dedicate 50% of the funds to the purchase of fire and rescue
18 apparatus which are often involved in responding to traffic collisions--or in the case of
19 pedestrians being injured, to them--to 35% for pedestrian safety initiatives so that we
20 make our County a safer place to walk around including the building of sidewalks and
21 15% for traffic safety initiatives in the Police Department's budget to, again, implement
22 initiatives that can reduce fatal crashes among our residents and also to generally
23 improve the safety of the traveling public. This is important in my view to establish this
24 because the legislature will be reviewing the program this year. We are accountable for
25 responding to the General Assembly--the County Council that is--and we are the only
26 jurisdiction in the state that currently has this program and has the authority to run a
27 Speed Camera Program as well as the municipalities at Police Departments within our
28 County. Rockville, Gaithersburg and Chevy Chase currently have Speed Camera
29 Programs. And, so, this bill will assure that there is a close nexus between how any net
30 revenues that come from this program are produced and used. I think it will establish that
31 very clearly and I think that is important in order to make clear that the funds are being
32 used in a way that will improve traffic safety, both preventive and when there are collisions
33 to make sure that there is a quick response. The bill is scheduled for a public hearing on
34 December 9th and I look forward to working with my colleagues on any ideas they have to
35 strengthen the bill. This is the beginning of the process on this, but I appreciate my co-
36 sponsors' support. Thank you.

37
38 MICHAEL KNAPP: Thank you very much. Councilmember Floreen?

39 NANCY FLOREEN: Thank you. I compliment my colleague, Councilmember Andrews, for
40 introducing this. I think this is important. And I personally believe in dedicated funding and
41 sticking to it to the extent you can. So, I am pleased to add my name as a co-sponsor.
42 When I spoke with him though, I did make it clear that I reserve my right to advocate for a
43 greater percentage of this money to go to pedestrian safety initiatives because those are



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1 the-- our pedestrians are the victims typically of many of our safety vehicular situations.
2 They are the victims and we need and we have an obligation to them to enhance their
3 environment. So, I just want to make that comment before we move forward. I think the
4 overall idea though is a good one and I'm pleased to be part of this.

5
6 MICHAEL KNAPP: Thank you. Councilmember Elrich?

7 MARC ELRICH: Well, I strongly support trying to develop a program to fund emergency
8 purchase or the purchase of emergency apparatus in the County and the other goals of
9 what we're buying here. I am seriously opposed to the bill in its current form. And I think
10 that it raises very serious questions. We buy ambulance and fire equipment all the time.
11 And the way this bill reads, this has to supplement the expenditures. Well, if we are buying
12 ambulances and equipment all time and we're just simply replacing equipment we already
13 have, this is not a supplement. This is just a replacement to the existing funds and it also
14 means that the County Executive is already spending this money. We're spending this
15 money in the public safety arena, which means if we now target it to particular categories
16 and these have to be supplemental to what we are currently spending, we've just ripped
17 the equivalent amount of money out of these other categories--meaning, that's a hole we
18 have to fill in other parts of the public safety budget. And we all know what kind of budget
19 we are dealing with this year, so, I think this bill is going to make our job more difficult, not
20 less difficult, and that if we want to dedicate money to, you know, fire equipment, we ought
21 to come up with a methodical way of doing that and set that as a priority, but I think this
22 bill gets us into more problems and I don't actually think it's going to pass the legal test in
23 terms of actually being a supplement when all you're doing is replacing which you buy
24 anyway.

25
26 MICHAEL KNAPP: Councilmember Leventhal?

27 GEORGE LEVENTHAL: I really appreciate the thoughtful approach that the Council Vice-
28 President takes to legislation. He has introduced many good ideas in this Council and I
29 have supported many of them. I have reservations about this bill. And what I really want to
30 make clear is I know that the Council Vice-President has embarked on a very strong
31 campaign against the ambulance fee. And I am still agnostic on the ambulance fee. I see
32 merits. It would be nice to have the revenue. I see a downside in so far as it's not my
33 favorite policy approach to raising revenue. But what this bill does not do I think is provide
34 an alternative to the revenue that would be generated by an ambulance fee and I--with
35 regret because I really respect and admire the good thorough work of the Council Vice-
36 President--I do want to get that on the table. This is not an alternative to the ambulance
37 fee. This is money that we would be getting anyway. So the Council Vice-president has
38 his ideas and he's Chairman of the Committee of Jurisdiction as to how that money should
39 be spent and he's entitled to express those views, but if we were to do any ambulance
40 fee, that would be revenue that we otherwise would not be getting. This approach to
41 speed camera is revenue that we will be getting anyway. So, it isn't an alternative to that if
42 we are trying to expand the revenue pie. The other real question I would have which I
43 understand this bill does not accomplish--I'm a fan of speed cameras--I know that there



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1 are speed demons who don't like them and libertarians who do not like them, but
2 overwhelmingly, neighborhoods want them. I hear from more constituents who want
3 speed cameras installed in their school zones and in their speed traps than I do from
4 those folks who are ticked off because they got a \$40-ticket. I got a couple of tickets on
5 Piney Branch Road and I was delighted to get them. You know, I was glad to get the
6 warning. I was. I was delighted to get the warning. I deserve it. I was guilty. I paid promptly
7 and I think it has altered behavior in a beneficial way. So, I'd be very happy to see more
8 speed cameras installed, but as I understand the Council Vice-President's proposal, that
9 is not accomplished through this legislation. So I always appreciate the thought and care
10 that the Council Vice- President puts this into issues. I do not think that this bill
11 accomplishes as much as he suggests that it does.

12
13 MICHAEL KNAPP: I thank everyone for their comments. We will have plenty of time to
14 actually address this in the public safety command before the full Council, but we can start
15 it now. I will just make two notes though that I think are important to clarify. First,
16 unfortunately, we don't purchase a lot of new apparatus. In fact, up until 2003 or 2004,
17 there had not been new apparatus purchased in Montgomery County for about 12 or 13
18 years. And, so, the previous Council spent--under the leadership of the Public Safety
19 Committee Chairman and Vice President Andrews--spent \$32 million that we are still
20 finally getting the benefits of as far as new apparatus. And one of the reasons that we got
21 into that hole in the first place is because we did not have any resources allocated to
22 funding for replacement of apparatus. And so, in fact, we did kind of a one-time fix and we
23 still have no ongoing activities to maintain apparatus. In fact, that's something that in the
24 Office of Legislative Oversight, it was recommended in a study that they have done four
25 years ago that we needed to have about six to eight million dollars each year dedicated to
26 that and that has never yet been included in the budget. And, so, I think this is a way to
27 potentially address that issue. The other point I would, I guess, identify is that this is not
28 funding that is currently in the budget. These are resources that we need to show the
29 legislature that we have allocated above and beyond what is currently being spent in the
30 area of public safety and pedestrian safety. And, so, this is a way for the Council to say
31 here is how we think these resources should be allocated but it is not pulling anything out
32 of the budget. It's merely saying here's where the legislature is going to spend the
33 additional revenue that's coming in as a result of the speed cameras. I appreciate the
34 comments everyone has made and we will have a good discussion, but I appreciate the
35 thoughtfulness of what has been put forward here. And I look forward to us coming back
36 to the full Council for their discussion.

37 PHIL ANDREWS: Thank you very much for those comments and it's absolutely right.
38 There is no money in the current budget for apparatus replacement. The County
39 Executive has suggested that he would fund that through ambulance fees. This is an
40 alternative way to meet that need.

41
42 MICHAEL KNAPP: Okay. Without further discussion, Bill 35-08 is introduced. We now turn
43 to the call of bills for final reading--Bill 39-07, Agricultural Land Preservation Amendments.



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1 That is item number four in everyone's packet. Quickly, Bill 39-07 would update County
2 law governing the purchase of agricultural easements and, more importantly, conform the
3 County law to recently revised state law. If you're following along in your packet, much of
4 the actual language starts on Circle 16. The other thing that this bill does which is
5 significant is it provided a vehicle for us, for the County to actually begin to proceed down
6 the road of implementing a Building Lot Termination or BLT program. And, so, as it was
7 introduced, it did not mention the BLT program, but we did consider that and it's included.
8 The Executive Planning Board agreed that the BLT program will at least build the
9 easements, that the program we're buying must be authorized under County law and that
10 this bill presented in a suitable way to do so. And so, we will--I will turn to Mr. Faden to
11 walk us through some of the pieces. One point I would note though which is significant is
12 there is an element in how you actually price sand mound or how you actually price BLTs
13 and how you actually determine which parcels are potentially utilized for BLTs. And part of
14 that has to depend upon whether or not it is a buildable lot. Otherwise, the Building Lot
15 Termination Program doesn't work very well. And, so, there is a question as to what is a
16 permissible sewage system to determine whether something is a buildable lot. One of the
17 things that has been in discussion for a quite sometime is whether a sand mound is in fact
18 a legitimate sewage system to be included for development in the Agricultural Reserve.
19 That is a meritorious discussion that the Council will have in the coming year. But it's not
20 really the purpose of this discussion today and, so, I would urge us to avoid falling down
21 that trap because we could probably spend much of the rest of the day debating about
22 what we thought about sand mounds and not get to the rest of the things that we have
23 before us. It is an important issue. It will play a role in this at some point, but it is not
24 necessarily addressed in this bill and it is something that I think we should avoid kind of
25 getting too much in the weeds as we discuss this today. It just gets us stuck in the sand,
26 correct. With that, I will turn it over to Mr. Faden to walk us through some of the specifics
27 of the bill. I would also just note that there were a few minor amendments that the
28 committee made, but it was passed at the committee with a vote of three to zero. Mr.
29 Faden?

30
31 MICHAEL FADEN: Thank you, Mr. President. As you mentioned, the bulk of this bill is a
32 re-qualification of existing County law to reflect the changes made a couple of years ago.
33 In state law, the major change there was the elimination of the term and process for
34 agricultural districts. Instead, what we have now are state easements run by the Maryland
35 Agricultural Land Preservation Foundation and the County Easements run by the County
36 and the process that involves the Planning Board, Department of the Account
37 Development and the County Council. The bill goes into that detail, but that essentially
38 reflects the current law. The major new area, new topic in this bill as you mentioned is the
39 building lot termination easements of authority which starts on Circle 35 of the packet. The
40 new language runs from Circle 35 through 37. It was essentially worked out through
41 amendments proposed by the Planning Board and some modifications proposed by DED
42 staff and it's all accepted by the PHED committee and then polished a bit afterwards by us
43 working with all parties. As you mentioned, the key language is on Circle 36, lines 911



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1 through 917. A BLT easement can only be created on a buildable lot which is already
2 defined earlier in the chapter, which is located in the RDT zone, a zone for residential
3 density no higher than one unit per 25 acres and capable of being serviced by an
4 individual sewage treatment unit which meets the requirements of the County law and it
5 does not attempt to further differentiate between types of sewage treatment units.

6
7 MICHAEL KNAPP: Okay. Councilmember Elrich?

8 MARC ELRICH: Is it appropriate to discuss the amendment that Mr. Berliner has included
9 in our packet?

10
11 MICHAEL KNAPP: Would you like Mr. Berliner to discuss the potential idea first?

12 ROGER BERLINER: I'm always prepared to defer to my colleagues, but if they're going to
13 talk about an amendment that I haven't offered yet, I would appreciate the opportunity to
14 speak to it first.

15 MARC ELRICH: Then far be it for me to stand between you and the microphone.

16
17 MICHAEL KNAPP: Before we get to the amendment, I just want to make a couple of
18 remarks. I want to thank everyone. This concept of a BLT is the subject of a lot of
19 conversation that started primarily as a result of the Ad Hoc Agricultural group that was
20 put together under the presidency of Councilmember Leventhal about four years ago now,
21 four years ago, three years ago. And there were 24 or 26 dedicated representatives of the
22 community who met for many, many hours to discuss a variety of issues that are
23 important to the agricultural community and to the preservation of the Aa reserve. And one
24 of the key issues that they all discussed and generally agreed on was this notion of
25 creating a Building Lot Termination Program. And, so, this is the work, this is the result of
26 a lot of work on the part of a lot of people and this is something that I think most everyone
27 agrees that if we can come up with the ways to provide easements to allow us to make
28 sure that land that could be developed can stay in agricultural productions. That's one of
29 the single largest things we can do to ensure the ongoing preservation of the Ag reserve
30 and the ongoing preservation of agriculture in the Ag reserve that we can probably do in
31 this County. And, so, I just want to thank everybody for their efforts on that because I think
32 it's important to know how many people participated in that process. And not everybody
33 agrees on all pieces, but I think what's come forward here is a very significant step
34 forward. And I would also like to thank Jeremy Criss for his efforts in trying to guide this
35 through both that discussion there and the discussion as it is related between the
36 Executive branch and Park and Planning and the Planning Board or Park and Planning
37 and the Council. And I would also to thank the founder of the Ag reserve who is before us
38 and the Chairman of the Planning Board, Dr. Hansen. And, so, I just want to put that out
39 there because I think this is a very significant step forward. And I know that-- Let me turn
40 to Councilmember Floreen on comments there and end it with Councilmember Berliner to
41 talk about the potential amendment that he may be proposing.

42 NANCY FLOREEN: Thanks. Just on the point of this initiative, I think it is important to
43 remember this was Jim Clifford's idea. And I see his son Jim just arrived. But it is tribute to



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1 the creativity of Montgomery County players that someone thought about what is really
2 the problem that we are talking about and how do we solve it. And the whole issue here is
3 identifying the fragmentation issue which has been the driving force for a lot of other
4 ancillary pieces of legislation. But this is really getting to the heart of the issue. So, I just
5 wanted to say that because it has taken many years in getting to this point. And there he
6 is. Mr. Clifford, I am paying tribute to you for your creativity in bringing so many people
7 along to focus on the issue of fragmentation in the Ag reserve. And, so, I just want to
8 make that comment. A lot of people put a lot of time into having conversations about this,
9 are certainly arguing about it. A lot of the ancillary issues like sand mounds, like these
10 other sorts of issues are driven by this very basic concern. And we, as legislators, tend to
11 look at solutions that do not really get to the real problem and this is one that does. Again,
12 I wanted to thank all the players, but especially Mr. Clifford because he is the one with the
13 idea and has persevered for so many years to get it to this point.

14
15 MICHAEL KNAPP: Councilmember Berliner?

16 ROGER BERLINER: Thank you, Council President. Let me begin by just observing that I,
17 too, am very pleased that we have before us this BLT Program. Its importance cannot be
18 overstated. So, it is a big deal. We are making a very significant breakthrough by creating
19 a market where we simply do not have a large enough market. And now we will have a
20 market that will allow us to move forward with the other initiatives that we need in order to
21 preserve the agricultural reserve. That is too important to allow it to become suburbia. We
22 need it as it is and we need to provide economic value for those that we are saying should
23 not develop their land and this program will provide that. The amendment that is in this
24 packet that was under discussion was an amendment that said if we are going forward
25 with this at this particular moment in time, that I thought it was important to make sure that
26 people understood the range of the financial obligations that they would be undertaking.
27 We have a very ugly economic climate right now in which we are struggling through and if
28 we are going to say to the development community I think correctly that they should make
29 a contribution to this particular problem. I also felt it was important to have an idea of what
30 the nature of that economic contribution was going to be at the time that we are passing
31 this so that that community can make its plans in light of some degree of certainty. I have
32 discussed this with the Chairman. I have seen the communication from Mr. Criss with
33 respect to this. I have talked with the President of the Council and the Chairman of PHED
34 Committee and I am persuaded that it is not necessary or may not be appropriate to do
35 this at this moment in time, that we will be getting the regulations that would implement
36 this. And my hope is that the County Executive will appreciate the need for some degree
37 of certainty, even certainty within a band of flexibility. I understand that market forces are
38 market forces, but there needs to be some certainty and I think in the first instance we
39 could allow the County Executive to come up with that process, to submit the regulations
40 to us. And to the extent to which we believe that the guidance provided in those
41 regulations are insufficient, we can have that conversation at that point in time. To have it
42 now seems to me to perhaps be advanced when it needs to be and particularly since Dr.
43 Hansen was so favorably disposed to this amendment that I thought that in that vein I



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1 would suggest to my colleagues that I will not be offering it. But if Councilmember Elrich
2 would still care to offer it in his name, you know, I am happy to have that conversation.

3
4 MICHAEL KNAPP: Thank you very much. I just wanted to for point of clarification, we
5 actually have a couple of different issues converging over the course of the next couple of
6 hours which is where I think Councilmember Berliner's motivation came from. We're
7 addressing the BLT Program which has established us a way to address building lot
8 termination and a way to address TDRs, kind off[inaudible]. We're also going to address
9 the TMX zone. In order for the County or for the BLTs to be purchased, there needs to be
10 some way to purchase those BLTs either through Easement Programs or from some pot
11 of money that we have to actually fully determine. One of the proposals that is before us
12 shortly is using an element of the of TMX zone to effectively have developers purchase
13 additional density to the purchase of BLTs. And, so, there is an economic discussion that
14 we are having as it relates to the TMX zone which will be coming up that is in some ways
15 linked to the price of the BLT. And, so, we need to figure out how those pieces work, but
16 they are kind of separate pieces that we need to put in place. And I appreciate
17 Councilmember Berliner's recognition of the fact that there are a lot of levers that we need
18 to pull and we need to pull the right one--probably regulation is the best one--and that we
19 need to see how those things work so we can best effect the appropriate outcome for both
20 the agricultural community and the development community to ensure that we get the
21 most. That's what we need in each of those areas. Councilmember Elrich and then
22 Councilmember Leventhal.

23 MARC ELRICH: I am not going to actually offer Roger's...

24
25 MICHAEL KNAPP: We appreciate that.

26 MARC ELRICH: But I do think that what you just said leads to where this was meant to
27 go. I mean, the problem I have with the bill is his amendment as it was written was the
28 idea that it set a cap on the price of the BLT and that is what I think folks in the Ag reserve
29 sort of rebelled against because the value might be 200,000 today, it might be \$400,000
30 tomorrow. It might be \$200,000 to one developer and actually goes up the next day and
31 it's \$450,000. And, so, there is no certainty that there's nexus between what you get in
32 terms of density and what you pay. I had thought we were going to try to decouple the
33 issue of buying a BLT from making a payment to the BLT fund and which is why I was
34 going to suggest amending this. But the questions of whether it belongs in this bill or it
35 belongs in the TMX zone and whether what we do is we obligate people to make a
36 payment equivalent to I think what you are talking about here but not attached to a BLT
37 but a payment to a fund for which you get X amount of density and if it buys one BLT in a
38 good year, great, if it buys two in a depressed economy, all the better. I guess that's what
39 side to sit on and if you have to make two payments to get one BLT under different
40 circumstances that's just the way it is. But I do think we need to discuss this and flush this
41 out in one of these bills that is going to be put on our desk today.

42
43 MICHAEL KNAPP: Thank you. Councilmember Leventhal?



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1 GEORGE LEVENTHAL: Well, just to clarify for the interest of the public and even
2 sometimes the skeptical public, I believe it is the unanimous intent of all nine
3 Councilmembers that our 93,000-acre agricultural reserve will be preserved as agriculture
4 and open space forever. And we know that there is not so much now in this market, but
5 we know that there is ongoing pressure for development. We know that not enough of our
6 residents even know that we have this unbelievable resource, these green lungs of our
7 County because if you live where most of the population lives inside the beltway or the
8 largest density of population, you may not travel up, you know, north of Brink Road or out
9 to Beallsville or Dickerson. These may not be communities that you are familiar with, but
10 we have a vast amount of land and what we're doing today is to protect it forever. And I
11 think all nine of us are committed to that, so, we ought to step back for a minute and
12 appreciate what it is that we're doing today. It is a major accomplishment. And I
13 congratulate everyone who has worked on this. I appreciate the PHED Committee's work
14 on these amendments. I appreciate the Executive branch sending them over. I know the
15 Planning Board has had extensive input into this, the Department of Economic
16 Development and particularly Jeremy Criss, the Agricultural Preservation Advisory Board,
17 everyone. I see George Lechliden here, the President of Farm Bureau. There has been a
18 lot of input from the affected parties and I have always believed and I continue to believe
19 that if you want to preserve agriculture, it is very important to listen to farmers who actually
20 do it every day. I am not a farmer and I do not know a great deal about what is the best
21 agricultural preservation policy, but I learned a lot in my six years here from listening to
22 Montgomery County farmers and I hope that they will celebrate the passage of this. I do
23 have a couple of questions. And the packet addresses them, but I just want to clarify. First
24 of all, this is a complicated bill--and with all due respect to Mike Faden who works very,
25 very hard and has a lot on his plate--the memo doesn't exactly spell out how this is going
26 to work. And, now, maybe the PHED Committee went through this. I see there is a role for
27 the Department of Permitting Services. I see there is a role for the Agricultural
28 Preservation Advisory Board. I see there's a role for a Maryland Agricultural Foundation
29 which I don't know much about and I'd like to understand who that is. So, let me lay out
30 what my questions are and then I will stop and let them answer. So, my first question is,
31 could we just get a very simple summary of how this will work? Who is in charge? Who
32 gets the application? Who makes the recommendation? Who has got what role? Very
33 simply. And then the Planning Board has some role but that is not clear to me from
34 reading the bill. Okay, so that's my first question. The second question gets to the colloquy
35 that I had with Chairman Hansen the last time we took up the TMX zone. And although I
36 am absolutely a supporter of the concept with building lot terminations, absolutely, I think
37 it's absolutely the right way to go. I think future generations probably won't thank us but
38 they should. They'll never know and they won't even know who we are, but, you know,
39 they won't even know we are, but if they knew, they would thank us. So, I mean, I am all in
40 favor of the concept. Okay. But what I want to ensure here--and the packet addresses
41 this, but the bill does not--what I want to ensure is that the first big tranche of money does
42 not go to the people who are least likely to develop their land and that whether it is in regs,
43 you know--I see the exchange here between our Department of Economic Development



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1 and the Planning Board. And let me just call Mike Coley. I think there's a very important
2 point. And let me just--I highlighted it. It's in here now. Here it is. Okay. On Circle 92 of our
3 packet, Planning Board recommended language for this bill that's had criteria for
4 considering priority for purchasing BLT easements and the first of those was imminent
5 threat of development. Now, DED opposed that it is not included in the bill. I know that
6 regs are going to be written. The bill specifies that it will be DPS that will write the regs. I
7 am interested in this point and I am going to look at the regs to make sure that we address
8 this point. We don't-- I mean, we're grateful for those who maintain an agricultural tradition
9 in Montgomery County. We appreciate them and this bill is intended to respond to them
10 and to meet their needs. As I've said, if we're going to preserve agriculture, we should
11 listen to farmers. At the same time, this is not supposed to be a windfall profit opportunity
12 and it certainly not supposed to be a windfall profit opportunity for people who would not
13 develop the land anyway. We are trying to prevent subdivision. We are trying to prevent
14 fragmentation. And, so, with limited resources, we do not know where the resources are
15 going to come to do this. The TMX zone may provide some resources. The ALARF
16 Program, which I have been in an exchange of conversation with the Planning Board
17 about and Senator [INDISTINCT] who got an opinion from our State Attorney General
18 saying now that we may spend ALARF dollars for this purpose. We have a substantial
19 surplus today in the ALARF funds, so we got a great opportunity to acquire some of these
20 things. Some prioritization needs to occur. And I'd like to understand what is the thinking
21 here. So, I am very much inclined to support this bill. Although it does not contain statutory
22 language regarding prioritization, I do think that those are important points. So, those are
23 my two questions. Could I hear a simple explanation on how this will work, who
24 administers it, how do the agencies interact? That's question one. And then question two,
25 and it maybe the DPS who's going to write the regs ought to be the one to answer these.
26 Is DPS here today?

27
28 MICHAEL FADEN: It will actually be DED, the department which will draft the regs.

29 GEORGE LEVENTHAL: But that is not what the bill says.

30
31 MICHAEL FADEN: I think it does.

32 GEORGE LEVENTHAL: Well, show me because...

33 JEREMY CRISS: For the record Jeremy Criss, Agricultural Services Manager, on Circle
34 37 we've got line 943, it references the regulations that we need to-- the County Executive
35 must issue regulations under method one to implement this chapter. The regulations must
36 specify the method of easement evaluation, method of buying easements, terms of
37 payments for easements and methods of ranking offers to purchase easements. In my e-
38 mail, that is part of the supplemental packet, I tried to give you some of our criteria that we
39 have just with the BLT Program.

40
41 MICHAEL KNAPP: Let's get switched back though because we're still answering the
42 second question first.



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1 GEORGE LEVENTHAL: Okay. But I'm sorry, because on Circle 7 with the whole chapter--
2 and I understand that this is an existing law--I see that this is a law to be stricken now.
3 That's why I was confused. I see the bracket at the end. I see it is being stricken, so that is
4 why I needed some clarity.
5

6 MICHAEL KNAPP: So let us answer the first question first which is the quick overview of
7 how it actually works.

8 JEREMY CRISS: I would like to introduce John Zawitoski who is the Farmland
9 Preservation Administrator. I work with John on a daily basis and here is how our farmland
10 preservation programs work in a nutshell. Applications are submitted to John for a variety
11 of our programs. We have the MALPF which is a Cost Year Program with the State of
12 Maryland. That's where we provide about 40% of the cost of purchasing an easement and
13 the State provides 60%. We always try to go to that program because that stretches our
14 dollars further. So that's agricultural easement, very similar to our County Program which
15 is called AEP, Agricultural Easement Program. Both MALPF and AEP are almost identical
16 easements. The difference is that our AEP Program is 100% County funded and MALPF
17 is a 60/40 split with State and the County. John receives the applications and processes
18 them through the Agricultural Preservation Board. The question that you raised regarding
19 the involvement with the Planning Board--in accordance with House Bill 1331, we no
20 longer have what's called a district agreement. That was a requirement associated with
21 the MALPF Program. We now have applications for easement, it can be submitted to
22 John. Once John submits the recommendations to the Ag Preservation Board, it goes to
23 the Planning Board and the Planning Board approves an easement application the same
24 way they did previously a district agreement. So, we have modified our County statute to
25 be consistent with the state law so that we no longer have a district agreement. However,
26 the same administrative process has to be followed for the easement application that we
27 used to have for the district agreement. The Council ultimately approves the easements
28 under the MALPF Program. Under the AEP Program, our Executive regulations give the
29 County Executive the authority to approve the easement under the County Easement
30 Program. So, that is a very quick summary of how those two programs work. We also
31 have what's called the Rural Legacy Program, which is a Conservation Easement
32 Program. But in terms of how economic development is, the agency that processes all the
33 requests on a voluntary basis and the Agricultural Preservation Board, it's a County
34 Executive appointed, County Council confirmed group of five folks--three farmers, two
35 non-farmers that review and approve all of the decisions that are made by economic
36 development.
37

38 MICHAEL FADEN: Let me also just add. There is some language if you turn into Circle 31
39 in your packet taken from existing law but modified for the County Easement Program that
40 Jeremy mentioned. If you look at subsection E starting on line 774, it is a statement of
41 priorities for buying easements must be given to any applicants who meets all of the
42 following criteria. And particularly look at paragraph 3 on line 781, the land borders in a
43 municipality or other developing area and is likely to be developed in the foreseeable



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1 future--that is a priority statement that basically directs the process toward land that is
2 under the threat of development.

3
4 MICHAEL KNAPP: Thank you. Councilmember Floreen?

5 NANCY FLOREEN: Thank you. When I first started on the Council years ago, I asked
6 Park and Planning how much of the County was covered, preserved in green space. The
7 answer I got back--if you include all the AgReserve and Councilmember Leventhal has
8 mentioned it as the green lungs of the County--if you add it all up where we have all these
9 easements and all these programs, it's 47 % of the county is preserved in perpetuity these
10 easements. If you include the Ag Reserve--and I think it's important to remember...

11
12 MICHAEL KNAPP: That includes park also?

13 NANCY FLOREEN: Yeah. Parks, all the areas where we have other easements including
14 homeowners associations and whatnot, but my point is, really, that this legislation goes to
15 the last bit. These are properties that have already sold their TDRs, basically. These are
16 properties that they're opportunity left on 25 acres, basically, to add one home. Basically,
17 that's what this process is removing. And I just want to emphasize, this is a process for
18 getting to that point, but it doesn't go to the funding issues. It doesn't address them.
19 Period. It just sets out a process for how you would go about it if we do the other part,
20 either through the master plan initiatives or other funding initiatives. So, I thought it was
21 important based on the comments other people have made to remind us all that this is
22 going to expect other shoes to drop elsewhere. And I do very much support the concept of
23 us setting clear rules for what the cost is going to be. I applaud Councilmember Berliner's
24 initiative, thinking, worrying about that point. I agree that this is not the place to do it, but I
25 think clarity as to how we address and how we make this actually happen is going to be
26 very important through the regulations or however we address it. But this is just the
27 process and it's quite a tribute to all these players here on how they have been able to
28 work through the rather convoluted rules that we have in place already to preserve this
29 incredibly green backdrop to our 500 square miles of Montgomery County. I don't have
30 questions about this, but I did want to make that point. This is the sort of the last frontier
31 as it were in the Ag Reserve to eliminate that lost opportunity. And it does not go to how
32 we actually physically make it happen.

33
34 MICHAEL KNAPP: Council Vice President Andrews?

35 PHIL ANDREWS: Thank you, Council President Knapp. I want to thank the PHED
36 Committee, my colleagues and all those who have worked hard on this. It is not an issue
37 that has come before the committees that I served on and I have admired the work that
38 has been done. Without question, as Councilmember Leventhal said, the agricultural
39 reserve is one of the great accomplishments of Montgomery County. It is a historic
40 accomplishment it's one the entire council is committed and previous Councils. Dr.
41 Hanson played a big role in helping getting us started and we now have the Ag Reserve
42 for generations. It's important that we take the necessary steps to make sure that it is
43 preserved in perpetuity. And it is a remarkable achievement for a county to do this. I



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1 believe Montgomery County is the largest suburban-- has preserved more agricultural
2 land than any other suburban county in the nation. I see heads nodding, so, it is not a
3 typical thing. It is an achievement that shows that the folks got it going, some of whom are
4 sitting in front of us, had a lot of vision and it is important to us to fulfill it and we're on the
5 way of doing so. So, I want to thank all those who have worked very hard on this.

6
7 MICHAEL KNAPP: Okay, we are good.

8
9 MICHAEL FADEN: Mr. President, we sent out a supplementary packet morning that had
10 the discussion of the amendment that was not offered, but also there's another
11 amendment that I think everyone agrees with to just to modify the BLT language a little bit
12 to make it clear the intent. It's on the front page of the supplementary packet--amends
13 lines 899 through 902. I ask your consideration to that.

14
15 MICHAEL KNAPP: Is there any objection to the amendment as proposed? Okay, none,
16 and it is adopted. I see no further discussion. Madam Clerk, if you would, call the roll.

17
18 MARY ANN PARADISE: Mr. Elrich.

19 MARC ELRICH: Yes.

20
21 MARY ANN PARADISE: Mr. Praisner.

22
23 DON PRAISNER: Yes.

24
25 MARY ANN PARADISE: Ms. Trachtenberg.

26 DUCHY TRACHTENBERG: Yes.

27
28 MARY ANN PARADISE: Ms. Floreen.

29 NANCY FLOREEN: Yes.

30
31 MARY ANN PARADISE: Mr. Leventhal

32 GEORGE LEVENTHAL: Yes.

33
34 MARY ANN PARADISE: Mr. Berliner.

35 ROGER BERLINER: Yes.

36
37 MARY ANN PARADISE: Mr. Andrews.

38 PHIL ANDREWS: Yes.

39
40 MARY ANN PARADISE: Mr. Knapp.

41
42 MICHAEL KNAPP: Yes. Bill 39-07 passes 8 to 0. Thank you all very much. Thank you all
43 very much for your effort.



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1 JEREMY CRISS: I would like to say one thing. I want to thank everyone, especially Mike
2 Faden, because we had a number of issues that moved back and forth and I think Mike
3 has done a great job in helping us to get to where we are today. And one last thing, this
4 year, Montgomery County went from first place in the nation to second. And we've have
5 always known that Lancaster County, Pennsylvania, which has much more farm ground
6 than we have was going to pass us. So that just happened this year, but the good news is
7 that we have over 70,000 acres of land protected. That's a goal that we established 20
8 years ago, and we have the highest percentage of farm land protected under easement
9 than any other jurisdiction in the country and I don't believe...

10 NANCY FLOREEN: We're better than Lancaster.

11 JEREMY CRISS: And Lancaster County will never beat that percentage, so I just wanted
12 to make sure.

13
14 MICHAEL KNAPP: And when we pass this bill, we're even better than we were. Good,
15 okay.

16 PHIL ANDREWS: Wait, do they count as a suburban county?

17 NANCY FLOREEN: Yeah.

18
19 MICHAEL KNAPP: I don't think so.

20 NANCY FLOREEN: A whole different category.

21
22 MICHAEL KNAPP: Thank you all very much for your efforts on this. This is truly a
23 momentous step forward.

24 NANCY FLOREEN: Well done, Jim.

25
26 MICHAEL KNAPP: Good work, everybody. Okay, we now turn to our District Council
27 Session and we're right on time. First we have introduction, resolution to approve use of
28 advanced land acquisition revolving fund ALARF for acquisition of real property for Tilden
29 Woods Stream Valley Park: The Mary E. Armstrong property, action is tentatively
30 scheduled for November 25. Councilmember Leventhal.

31 GEORGE LEVENTHAL: Yeah, I have a question at the appropriate time.

32
33 MICHAEL KNAPP: Not on this one?

34 GEORGE LEVENTHAL: Yeah, on this one.

35
36 MICHAEL KNAPP: Now is the appropriate time.

37
38 GEORGE LEVENTHAL: I may not get another chance before having to vote on this. I'm
39 just trying to get a sense of-- is Park and Planning sending us these things as they come
40 up or is there some overall plan? I mean this ALARF is a major resource and we're not
41 going to be in a position-- we've never been in a position before and we're not going to be
42 in a position again to prioritize a very large dollar amount in this fund. I made it very clear,
43 my colleagues are probably sick of hearing me say--that I would think that agricultural



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1 preservations and, you know, our sensitive areas in the Ag Reserve ought to be a very
2 high priority. And I just feel like every month now, you know, there's a lot--it's like the
3 money is burning a hole in your guys' pocket. And we're getting an awful lot of this ALARF
4 requests and they're not in the Ag Reserve. And are we going to spend all the money
5 before we set priorities? I just don't get a sense of how this fits into an overall plan. I've
6 asked this question several times and I don't know much Tilden Woods Stream Valley
7 Park. It maybe desirable, but is Park and Planning trying to get rid of the money quickly
8 before the Council is able to set some policy priorities for the spending of this fund?

9
10 ROYCE HANSON: The simple answer to your question is no. We don't have a scheme to
11 exhaust the fund. The use of ALARF as you know is limited to things that are in the
12 master plan but not in the CIP that become available for acquisitions or are in imminent
13 danger of being lost if they're not acquired. The reason that you're seeing a lot of ALARF
14 funds being used for acquisition of parkland and open space right now is because there is
15 no money in Program Open Space, which would be the normal source of this kind of
16 funding for projects that are not in the CIP.

17 GEORGE LEVENTHAL: So how are we going to pay for BLTs which we just created?

18 ROYCE HANSON: You're going to pay for BLTs through both fees that come in from
19 development and from any other funds that are made available for it.

20 GEORGE LEVENTHAL: What about ALARF which the State Attorney General has opined
21 we may do?

22 ROYCE HANSON: The State Attorney General--I've read the State Attorney General's
23 opinion--I've asked our Council to take a very careful look at it. I think we've got to work
24 through any issue for the use of ALARF funds for BLTs or for other kinds of easements.

25 GEORGE LEVENTHAL: And while we're working through them, we're going to spend the
26 whole ALARF?

27 ROYCE HANSON: You're going to-- well, I hope you're going to spend ALARF funds for
28 appropriate targets of opportunity that come before the Board and come before the
29 Council. This is a situation in which we have been working with the County Executive's
30 Office to acquire what was regarded as an important parcel of land. And there's-- I mean,
31 if you don't want to spend ALARF funds for it, if you agree that it is an important parcel of
32 land to acquire, then I would suggest amending the CIP to put the money in the CIP to
33 acquire...

34 GEORGE LEVENTHAL: But I don't...

35 ROYCE HANSON: With bond money. And if--George, just a moment--if you use ALARF
36 funds for any purpose, whether it's to acquire land for a park or for a right of way and we
37 bring down--or for an easement--and we spend down the ALARF funds, we will be back
38 here to the Council asking you to replenish the ALARF fund with county bonds. So one
39 way or another, you are ultimately using bond money to buy-- whether we buy it through
40 ALARF or whether we buy it through the normal CIP process--that's where the money
41 comes from--and from repayments to the ALARF fund when we transfer the property that
42 we brought to the other agency.



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1 GEORGE LEVENTHAL: Mr. Chairman, nothing you've said and response to my question
2 has given me comfort that the Planning Board is thoughtfully and systematically assessing
3 the historic opportunity it has a right now as a result of the very large deposit into the
4 ALARF having to do with inter-county connector swaps. And I just don't feel like I've
5 gotten a thorough and substantive answer to that question and I don't have a sense of
6 how Tilden Woods Stream Valley Park ranks against any other opportunities that may
7 arise including opportunities to purchase BLTs. So, I listen carefully to what you said but I
8 don't actually feel like it was responsive to my question.

9
10 MICHAEL KNAPP: I appreciate the issue that the Councilmembers raised. And what I
11 would like to see is is it possible for us to either at the Committee or the Council either to
12 actually get a sense of-- if we need to do it in closed session because these are property
13 acquisitions to walk through the pending potential ALARF acquisitions that are out there
14 relative to some of the things we're looking at choice BLTs so we can actually get a sense
15 of where we might put things.

16
17 MARLENE MICHAELSON: I think that's absolutely appropriate. I think it might also be
18 appropriate to--I do not know if the vehicle for, a resolution or some other form--for the
19 Council to indicate that at certain part of ALARF you would like to have held fit to be used
20 for the BLT program and, again, would have to look more as to what the form would be to
21 express that. But I did also want to note that we don't prioritize ALARF purchases because
22 the idea is that any time there's something in a master plan that we think there's a future
23 need for, if the land becomes available, we don't want to lose that opportunity. And I don't
24 think we ever have I think any time there has been land that has become available for
25 future master plan purpose. Unless the Council said we've decided we no longer want to
26 support that purpose. I think we basically made every purchase. And then at the time that
27 the CIP project is before you, you can determine whether it's a priority or whether to sell
28 the land or use it elsewhere, but the idea is to preserve a future opportunity for something
29 that in the master plan has deemed to be important. So, we don't actually make the
30 priority trades-off when we make the ALARF purchase. That happens at the time of the
31 CIP development of the project.

32 GEORGE LEVENTHAL: Well, I appreciate both of those comments. And I understand that
33 a piece of land may become available for sale and that you may want to respond because
34 it's available for sale. If it were purchased by some other party, it wouldn't be available to
35 the county. So, that's a valid point and I appreciate the Council President and Chairman of
36 the PHED committee stating that he will put on his committee's agenda some discussion
37 of whether we can ensure that we are taking a thorough look at what, again, I think is a
38 historic opportunity which we will be sorry if we lose. Having just created this BLT
39 program, the question remains outstanding--how are we going to pay for it? And this is
40 one ways we might do that and I would really hope that this county would thoroughly and
41 thoughtfully, comprehensively look at this opportunity and not let it evaporate.

42
43 MICHAEL KNAPP: Thank you very much. Councilmember Elrich.



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1 MARC ELRICH: I want to agree with George's comments here. I mean, we know that
2 despite what we are going to do with the BLT fees today that that's not going to really
3 allow us to buy up the BLTs. And I haven't seen a projection of any development scenario
4 with the TMXs that are going to result in the evaporation of the BLTs anytime soon. And,
5 so, I understand there are competing needs and there's the thing that would complete
6 master plans, but this also completes a legitimate need that the county has.

7 GEORGE LEVENTHAL: Which is contained in a master plan, may I add.

8 MARC ELRICH: I don't see any budgetary difference in terms of impact. If I'm going to
9 have to pay back ALARF for the purchase of this property through a bond, what is the
10 difference between paying, you know, issuing a bond for this and issuing a bond for
11 something else? At the end of the day, if I've got to pay the interests and the principal
12 back, at that point ultimately it doesn't matter what it is I bought with it and, you know, that
13 ought to be a discussion, I think the Council ought to have. I do think we need a fuller
14 discussion about whether some of the ALARF money because I don't want to spend it all
15 because I do think there are going to be legitimate things that come up. But I would like to
16 have some discussion whether we should take some of it and use it to help remove some
17 of the BLTs. And, so, I look forward to having a discussion on the committee about that.

18
19 MICHAEL KNAPP: Councilmember Floreen.

20 NANCY FLOREEN: I think these are all good points. How much of the ICC repayment
21 money do we have?

22 BILL GREIS: The IC-- For the record, my name is Bill Greis with the Park Development
23 Division. We received about approximately \$30 million from the State Highway
24 Administration for ICC right of way. And now we have a balance in ALARF with this
25 acquisition, remaining, we'll have about \$20 million. The recent acquisitions that we made
26 in Upper Paint Branch--the [INDISTINCT] Property, the Mitchell Property--we even
27 acquired the famous Hillmead parcel that created a lot of discussion, but our balance right
28 now is about \$20 million.

29 NANCY FLOREEN: So, I would hope that at our committee session on this that we have a
30 good conversation about all the competing issues. This is not an acquisition that we intend
31 to pay back ALARF for.

32 ROYCE HANSON: This will not pay back ALARF. This is a park acquisition and park
33 acquisitions generally do not pay back ALARF because to pay back ALARF we would
34 have to issue park bonds and you can't pay bond money with bond money.

35 NANCY FLOREEN: I mean, there are lots of competing issues always. We need to make
36 sure that we have enough for those projects that we are going to pay ALARF back for as
37 well as things of this nature. So, I do think setting out the range of issues associated with
38 this, I think, are quite important when we do it in the committee particularly where we have
39 park acquisition for the BLT. Thinking through how we might manage the BLT part will be
40 important.

41 ROYCE HANSON: Yeah, one of the things I would just re-emphasize is that in an ordinary
42 year, if we had the normal acquisition funding from Program Open Space, we would be
43 using Program Open Space money for this kind of the acquisition because the Program



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1 Open Space fund has been diverted to the State General Fund to reduce the General
2 Fund deficit. Program Open Space is not available, so, that means that if the land is to be
3 acquired, this is the fund that's available to acquire.

4
5 MICHAEL KNAPP: That's a good point. That is something else that we need to look at as
6 had a meeting this morning on the state legislated priorities, there are a number of things
7 that are obvious potential reductions that are out there and then there are things that are
8 out there eat into resources that Montgomery County Council can utilize that never really
9 show up on any list of any place. So, all of a sudden, we're taking resources that we could
10 have allocated to other key county priorities that we are now having effectively to back fill
11 the funding that the state would have generally taken care of their responsibility for. So
12 that's important for us to understand, just the totality of that as well..

13 BILL GREIS: If I could, I would like to add emphasis Royce's comment by telling the
14 Council in case they are not aware that two years ago on fiscal year '06, we had \$18
15 million in Program Open Space money allocated to Montgomery County. That dropped in
16 fiscal year '07 to \$12 million. And in fiscal year '08, the current fiscal year, we've got \$3
17 million. So, you've had a substantial hit taken to our park acquisition program and we are
18 able to continue with master plan acquisitions, important additions to the park system by
19 using ALARF. And I think we're very fortunate that have this fallback option for us to keep
20 moving ahead with our Park Acquisition Program.

21
22 MICHAEL KNAPP: Councilmember Berliner and Councilmember Leventhal?

23 ROGER BERLINER: Well, I appreciate my colleague's comments on the need to prioritize
24 our ALARF funds and to have a systematic approach with respect to it. I do believe it's
25 something as well as using ALARF funds for BLT's. I think that's going to be an important
26 complement. I don't want my colleagues to be under any misconception that this purchase
27 is in any way not appropriate. This is an important purchase. It is a community that has
28 gone through a fair amount of stress with respect to Montrose Parkway. It is a needed
29 park and needed buffer for this community and it is in our master plan. So while it is
30 important for us to prioritize, let us not create any false impression that this purchase in
31 and of itself is not a very appropriate one and one we need to take.

32
33 MICHAEL KNAPP: Councilmember Leventhal.

34 GEORGE LEVENTHAL: Well, I say, my friend, Mr. Berliner, I'll consider the merits of this
35 land purchase. And I understand that we would not necessarily concentrate 100% of
36 ALARF decisions only in the Ag Reserve and I acknowledge that, you know, providing a
37 buffer to the Montrose Parkway has merit. So, I'll take a look at that when it comes before
38 us for a vote. But I also want to clarify with Marlene--was it not the gist of the Attorney
39 General's letter that ALARF need not be re-paid for easements that will protect the open
40 space in--when an agricultural master plan calls for that? We're not talking about having to
41 pay back the ALARF for those purposes.



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1 MARLENE MICHAELSON: Yeah, I don't think the Attorney General's letter dealt with the
2 repayment issue. It was whether or not we could use it for these purposes, and we found
3 that we could use it and we'll have to have that conversation about what the council's
4 intent is.

5 GEORGE LEVENTHAL: Okay, but it's not only for parkland that the ALARF need not be
6 re-paid. It is for parkland and preservation of open space, am I correct?

7
8 MARLENE MICHAELSON: No. In fact, there is nothing in the law that says it need not be
9 repaid. This is the interpretation of the Commission and purely from a fiscal point of view
10 that it would be contrary to the laws that they follow with regard to bonds, to issue a bond
11 to repay a bond, that that would be a violation of certain rules. There is nothing within
12 Article 28 that exempts them from repaying parkland.

13 ROYCE HANSON: There is a provision in Article 28, however, that if an agency does not
14 use the land or does not wish to use the land that we have acquired for it, that we may
15 use it as a park.

16 GEORGE LEVENTHAL: I don't-- I mean, I understand this will come up for discussion in
17 the PHED Committee, but on what basis does Park and Planning assert that it need not
18 repay the ALARF if the land is used for a park?

19 ROYCE HANSON: We have opinion of our general counsel with regard to that. And also
20 as Marlene just explained, when we are repaid by another agency, they are using their
21 bond money to repay us. If we were to repay ourselves for an ALARF purchase, we would
22 be using park bond money. And our Bond Council and our secretary of treasure are
23 extremely clear in their position that that is not a good thing to do.

24 MARLENE

25
26 MICHAELSON: And this issue has become before the Council before and not been one
27 that there's been a total agreement on it. So, something...

28
29 MICHAEL KNAPP: And we're going to get a lot of opportunity to talk about it and we will
30 talk about it, but I just want to remind everybody this was just for introduction. So, I
31 appreciate the comments that the council member has raised because they are very
32 important and I want to make sure that a forum to address them but I'm not sure we have
33 time to spend a lot more time on this today. Councilmember Elrich.

34 MARC ELRICH: Just a quick question--should Open Space money be available for Open
35 Space again? This is a theme I remember hearing sometime. Should that happen again?

36
37 MICHAEL KNAPP: From [INDISTINCT].

38 MARCH ELRICH: I don't remember who said it exactly. It might be that, but should that
39 happen, could you repay the ALARF out of Open Space? Could you go them and say we
40 want the Open Space payment to repay the ALARF for something we acquired with
41 ALARF in the absence of Open Space money?

42 ROYCE HANSON: Yeah, the state has to approve the acquisitions before they are made
43 with Program Open Space. Offhand, I do not know the answer to your question.



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1 MARC ELRICH: Would that be one of the other ones maybe we can talk about it when we
2 get into the discussion.

3 ROYCE HANSON: I don't think it's an exceedingly truthful line, but I don't know the
4 answer.

5 MARC ELRICH: And isn't it also true just in general that people issue bonds to repay old
6 bonds. I mean, you pay off your old debt and issue a new bond. I mean, that's not the idea
7 of paying bonds with bonds is not forbidden. It's actually practiced.

8
9 MICHAEL KNAPP: Okay, a good line of discussion and we will come back to this because
10 I think it's something that clearly the Council is interested of. And, again, this issue, action
11 is tentatively scheduled for November 25th. Given some of the questions that have arisen,
12 is there a specific need to have it done by the 25th. Or if this were to slip a week or two, is
13 there some disastrous thing that occurs?

14
15 MARLENE MICHAELSON: First of all, there is an expiration date on the contract of
16 November 28, but I think, in my view, the very broad questions the Council is asking
17 today, doesn't necessarily affect this particular acquisition. So, I think it would be still fine
18 to move ahead with this acquisition next week so it's before the contract expires, but then
19 try and schedule a committee follow-up before the next acquisition come to happen.

20
21 MICHAEL KNAPP: We now turn to action on resolution to extend time until January 22,
22 2009 for Council action on the Twinbrook Sector Plan. I need a motion for that.

23 DUCHY TRACHTENBERG: I move.

24
25 MICHAEL KNAPP: Move by Councilmember Trachtenberg. Is there a second?

26 PHIL ANDREWS: Second.

27
28 MICHAEL KNAPP: Seconded by Council Vice President Andrews. Is there a discussion
29 on the resolution? Seeing none, all in support the resolution, indicate by raising your hand.
30 I think that's--that is unanimous among those present. Thank you. We just extended the
31 action for the Twinbrook Sector Plan to January 22nd.

32 DUCHY TRACHTENBERG: We're not making a decision on Twinbrook.

33
34 MICHAEL KNAPP: No, we just give ourselves time to do it then. Action, we have a
35 resolution to establish a public hearing for January 13, 2009 at 1:30 PM on an amendment
36 to the master plan for historic preservation; Wild Acres, Grovesnor Estate. Is there a
37 motion?

38 NANCY FLOREEN: So move.

39
40 MICHAEL KNAPP: Moved by Councilmember Floreen.

41 DUCHY TRACHTENBERG: Second.



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1 MICHAEL KNAPP: Seconded by Councilmember Trachtenberg. Is there a discussion on
2 the resolution? Seeing none, all in support, indicate by raising their hand. That is also
3 unanimous among those present. Thank you. We now turn to another simple issue--
4 Action on Zoning Text Amendment 08-14, Transit Mixed-use Zone establishment. We turn
5 back to our discussion from a couple of weeks ago. We get to the right piece of paper in
6 from of us here. As I think everyone is aware, we have before us both the Twinbrook
7 Sector Plan and the Transit Mixed-use Zone. The Transit Mixed-use Zone was developed
8 at least initially for Twinbrook Sector Plan but is ideally a new zone that can be used for a
9 number of the master plans that will be coming before the Council in the coming year to
10 year and a half in our development corridor and, so, this is what the goal had been was for
11 this to serve as a framework or a template for the master plans in both Twin Brook,
12 Germantown, Gaithersburg, and White Flint as I understand from the Planning Board. And
13 so this kind of is the building block that we'll use in the Twinbrook Sector Plan. There are a
14 number of items that we begin to work through two weeks ago at our committee
15 worksession. I will turn to Mr. Zyontz to pick up where we left off and we will continue our
16 discussion. Mr. Berliner, before we get started? Hold on just one second.

17 ROGER BERLINER: Well, just help me if we could at least frame the conversation as to
18 whether or not we are comfortable in this moment in time in approving a TMX for anything
19 beyond Twinbrook, because I think so much of the conversation becomes simpler if we
20 make that threshold decision. And, so, if we could have the pros and cons of that first and
21 make a decision on that, it seems as if so much else falls out as a function of that
22 decision.

23
24 MICHAEL KNAPP: That's an excellent point and I think there's been lot of conversation
25 amongst the Council, and I believe that a majority of the committee is inclined to move in
26 a direction that establishes a TMX zone for Twinbrook and then looks beyond that. And,
27 so, I think it will be helpful for Mr. Zyontz to walk us through that as to what that would
28 mean or what that doesn't mean. And then I know the chairman will have some comments
29 as well as I see him pulling up to the table and we will go from there. So, lay that out for
30 us, Mr. Zyontz, if you would please.

31 JEFF ZYONTZ: Certainly. The Council last week went through all of the particulars of the
32 ZTA as the committee went through them as well with individual recommendations to
33 change various aspects of it. With regard to multiple zones versus a single zone, the
34 Planning Board submitted this zone as extremely flexible. It had only one FAR limit with
35 limits to then be controlled by master plan recommendations for really both height and
36 density. The thought there was that they could then apply a single zone everywhere within
37 the sector plan areas and have more master plan control and design guidelines to control
38 exactly when on the property. I had recommended to the Committee having multiple
39 zones similar to the family of zones in the central business districts. In that way, you can
40 more tailor the zone to those requirements in area and have specific notice to both the
41 property owners and the community around them of what the maximum in those zones
42 were. Within the Twinbrook area itself, the maximum FAR is two plus MPDU requirements
43 or work force housing requirements. Beyond that, if it was all residential, that could be as



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1 much as 32 % in addition to that. They suspect they will get many mixed-use projects so it
2 will not be as high as 32% above the two. But, certainly, the concepts in the zone are
3 appropriate to multiple zones. It can be tailored in a way to do this just for a TMX-2, if that
4 is what the Council wishes to do with Twinbrook, and then do a different zone in White
5 Flint if that is inappropriate for a higher density. I do think it makes--it adds to the
6 uniformity of the zone to do it as multiple zones and it decreases any delegation problems
7 that might exist although it seemed okay as it was. But, certainly, it is a better means to do
8 multiple zones.

9
10 MICHAEL KNAPP: Chairman Hanson?

11 ROYCE HANSON: If-- well, first of all, we have been trying to create a zone that could be
12 used in a number of situations. We just finished our last work session on Germantown last
13 night in which we proposed to apply the TMX zone in a number of locations in
14 Germantown. The idea of having a separate zone tailored for each master plan, I think,
15 will require us to go back and rethink how we do it. I do not think this is either necessary
16 or particularly wise or useful. If you are going to create a new zone for Twinbrook, that is
17 not the zone that's before you. And you want to have a maximum in the optional method
18 of two--although we've got some places in Twinbrook where it's .15--you could also have a
19 TMX .15. In Germantown, we are recommending some densities at .75. You could have a
20 TMX .75. You could have a zone for every percentage or every whole number that you
21 want. Applying the zone, I think, we want to think also about the spread between the
22 standard and the maximum that's available within the zone. If we went back to Twin
23 Brook, we might want to go down to a new standard. I'm just sort of thinking out loud
24 because I did not see this until this morning. We might want to drop the maximum FAR in
25 height in the standard method. Why? Why would you do that? If you require the zone to
26 conform to the master plan and the master plan recommends a density, and that master
27 plan is what the citizen reads and relies upon because the zoning texts can be changed
28 relatively easily whereas the master plan cannot. What's the necessity or use of that? If
29 you can do it with one zone, why use three? Also, we come to situations in which on large
30 tracks, we do not have many of those in Twinbrook, but we have them in other places
31 where a property or a holding, because of its extent, may fall in the master plan under
32 different zoning categories, or under different density recommendations. Part of it may,
33 say, the recommended for an FAR of 3 and some it may be recommended for an FAR of
34 2. It's a lot easier I think, just in terms of the zoning that's then applied by Section Map
35 Amendment to have a single zone that can be applied. I don't think there is anything that
36 requires that there be a separate zone with all of the same uses. The only thing different
37 in this family of zones would be the maximum FAR or may be the maximum FAR and
38 height in the standard method. What do you gain? You gain multiple pages in the zoning
39 ordinance and nothing else that I can see.

40
41 MICHAEL KNAPP: There are some questions from a couple of council members,
42 Councilmember Elrich?



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1 MARC ELRICH: I have been struggling with this issue. I'm trying to think which approach
2 makes more sense. I'll tell you that I'm un-persuaded by your optional method versus-- or
3 your standard versus optional method, spread issue, because that exists under your
4 scenario and under any scenario where you have a standard method and then you vary
5 the density by language and Jeff proposes varying the density by designation of an FAR.
6 But you still have the issue then in some places, the optional method has been allowed
7 this height and this density and the standard method is going to...

8 ROYCE HANSON: I can see that.

9 MARCH ELRICH: Okay, so, I don't see that as a battle point and I don't see this as if it's
10 Jeff proposing radically different zones. I see him proposing an identical zone that applies
11 that applies to every place except saying, clearly, this is going to be the height limit or this
12 is going to be the density limit in this area. And, again, this doesn't seem complicated to
13 me. It seems like he's protecting the principle, which I think all of us agree this zone
14 should achieve which is mixed-use. He is introducing a level of certainty about what the
15 FAR is going to be. And this is where my problem is and where I would like to have been.
16 I thought that in coming here with a single zone with his option of, let us say the FAR 4 as
17 the max, that the language of the master plans be written in a way to essentially
18 accomplish what you accomplish with form based cuts where there is no question about
19 what can be put at different places within the area being developed. I have not heard or
20 seen anything that approaches the level of certainty that I would get out of the form--the
21 approach that I associate with form based cuts, which means as I look at the fringe areas
22 and the areas where I think we're going to have the most issue with communities where
23 one thing clashes with another, I don't have the certainty that we will achieve--in this
24 scenario--the kind of flexibility and the kind of transition that I would like. I don't know that--
25 I don't feel that this language actually would give, would protect the Planning Board from
26 assertions that you're simply being arbitrary, capricious, and that the zone allows X and
27 you are prohibiting me from getting X and then we're going to be in a world of trouble.
28 And, so, I'm kind of reverting back to I'd rather just say you can't be more than .5 next to a
29 residential neighborhoods, you can't be more than one within a certain distance in order to
30 achieve what I hope we'd-up be able to achieve through a different writing of the text or
31 the master plans. But I do not see it and I do not see the certainty, so I am left with what I
32 am familiar with rather than this kind of open-ended approach.

33 ROYCE HANSON: What you are doing is reverting to a system that preceded the CBD
34 zones, what we created the CBD zones to avoid. You're not creating any certainty if you
35 call it a TMX 2, and then you say in the master plan but you can't have 2, you can only
36 have 1.5. The only way you can do that is just forget about optional method and apply a
37 flat Euclidean zone and recommend floating zones and then the Council can set
38 everything it wants. You can also do it much better, I think, with the hybrid zones that--
39 such as a CBD and such as we are recommending with the TMX--that allow you to set a
40 base that allows development of right to a certain level and that provides an optional
41 method that can be attained up to the limits prescribed in the master plan if it meets all of
42 the requirements of the optional method. We have been doing this for 30 years. It has
43 worked extremely well.



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1 MARC ELRICH: So, what is the issue of saying then that Twinbrook is TMX 2? It seems
2 that gives you exactly what you want.

3 ROYCE HANSON: You can, you know, you're the Council. If you want to do it that way,
4 you can do it that way. What I'm telling you is the judgment of the Planning Board. It's not
5 the judgment of the chairman. This I really resent. It's the idea that this is kind of my
6 personal view. I am representing the view of the Board. The view of the Board is that you
7 should use one zone, that that is the better way to do it. It's not the only way to do it. You
8 can't do it Jeff's way. We don't think that's the best way to do it. That's our advice to you.
9 That is our best advice to you.

10 MARC ELRICH: You know, Royce, I'm not blaming you or saying to you that this is your
11 personal message. I understand that you actually worked on the Planning Board and
12 there are like four other people and they've contributed.

13 ROYCE HANSON: Good. I'm glad that somebody understands that. I'm really upset about
14 that.

15 MARC ELRICH: And I don't think this should come down to-- this is not a fight between
16 you and the Council. I am trying to understand why it would be a problem in Twinbrook to
17 say, since you only intend to go up to a two anyway, to just to say a two and then have the
18 discussion about White Flint and Germantown in their separate context. If everything else
19 stays the same that you value and we all agree with, why are we fighting?

20 ROYCE HANSON: Well, I have to ask you a question. And I understand the complication
21 and the difficulty of this because we're dealing with at least three other master plans
22 where there is a high likelihood that we will use these zones and you haven't seen those
23 master plans. So, you are trying to make a judgment on a zone that we're saying would
24 apply to other places. We have the same problem when we dealt with the CBDs years
25 ago. We had one place where we, already, we're ready use to them. We will have to go
26 back. And I'm still a little--I am assuming that if you use the TMX now, cut its optional
27 method to two, that in--that really doesn't do anything to the recommendations in
28 Twinbrook.

29 MARC ELRICH: Right. Correct.

30 ROYCE HANSON: What it does is it does everything to the things that we are
31 recommending not in Germantown because we are not going above 2 any place there.
32 We are back to White Flint where we are most likely. We have not gone to a public
33 hearing on White Flint. We haven't prepared the plan yet for White Flint, but at least for a
34 hearing, but we are getting close to going to a public hearing grant. There we're going to
35 be recommending some densities of 4 and 3.

36
37 MARC ELRICH: Then we just write a TMX 4 a zone?

38
39 MICHAEL KNAPP: And I--but I think exactly...

40 ROYCE HANSON: I really think this going to...

41
42 MICHAEL KNAPP: What you just articulated is exactly the problem everyone is wrestling
43 with...



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1 ROYCE HANSON: Pose some real problem for us.

2
3 MICHAEL KNAPP: Is if we make a decision on a TMX zone today, how do we not have a
4 discussion about White Flint without knowing what that is? Which is exactly what you just
5 said because, well, we'll have to go back and rethink how we do White Flint. Well, that is
6 what we are trying to avoid as we have this discussion.

7 ROYCE HANSON: I just don't think, there's--you know, I am having difficulty seeing what
8 you think the problem is. The problem--it doesn't matter where the optional method top, is
9 set at 4, or 3, or 2. If the master plan recommends a density lower than that, then that's
10 the density that can be provided there. So, why do I need three zones to do that?

11
12 MICHAEL KNAPP: Councilmember Berliner.

13 ROGER BERLINER: One more.

14 MICHAEL KNAPP: And recognize what we're trying to get here is information for us to
15 make a better decision not necessarily--we may or may not convince the chair and the
16 chair member; not convince everybody here, but we have to have the dialogue to
17 understand the elements of what we are trying to make a decision on.

18 ROGER BERLINER: And it's an important conversation and we need your guidance and
19 you need to hear how it filters through at this side of the table. So, from my perspective,
20 Twinbrook is pretty straightforward. We have it before us as a master plan. There is not a
21 lot of controversy with respect to it. For purposes of conversations, it is a non- issue.
22 White Flint on the other hand is a big deal, a huge deal. And my office--I assume my
23 colleagues--have had meetings with folks who are interested in White Flint who have said
24 White Flint is not the same as Twinbrook and you should be looking at different things
25 when you look at White Flint. Now, you may not ultimately agree that we should be.

26 ROYCE HANSON: No, I would agree, you should.

27 ROGER BERLINER: Okay, with respect to what is impacted here, the conversation quite
28 frankly has been when should--what should be the limit on the standard method? When
29 should optional kick in, not how high should optional should go? It isn't a concern with
30 respect to the four FAR. It is a concern with respect to whether .5 is the appropriate place
31 to trigger it, which we would establishing I believe in this zone. And then if we do that now,
32 do we revisit that issue later when White Flint comes up or have we actually made that
33 decision? And I know you are comfortable with that decision across the board as it applies
34 to both White Flint and Twinbrook. Quite frankly, I am not in this moment. So, to the extent
35 to which I can defer making a decision on White Flint that is from the perspective of those
36 who seek to develop in White Flint a very important decision, then I say, well, let's take--
37 let's go with Twinbrook and defer recognizing that we are going to use the same template
38 but that we are going to--maybe and maybe not,--tweaking it. But if we're not going to be
39 tweaking it, then we are all making decisions now fundamental to White Flint before we
40 have a better sense of what those decisions should be.

41 ROYCE HANSON: No, you're not.

42 ROGER BERLINER: Correct?

43 ROYCE HANSON: You are creating a zone at this point.



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1 ROGER BERLINER: What is that zone?

2 ROYCE HANSON: But, wait a minute, let me finish. If you get to White Flint and you are
3 dissatisfied that the zones that we are recommending--that you applied by Sectional Map
4 Amendment--are not appropriate to what you want to achieve in White Flint, it's simple to
5 amend the zones or create a new one if you do not think that TMX where we're applying it
6 is a right zone to apply. As I say, we haven't been to public hearing on it. There's been
7 some discussion and maybe we ought to be using the CBD zones in White Flint. Have
8 you declared the CBD? That would be another kind of approach that could be taken there.
9 What we've been trying to do basically with the TMX zone is to create a zone for the trans-
10 association areas that could be applied in a number of places that could be rather simple
11 and straightforward in terms of its provisions to have one zone and to have it tied to the
12 sector plans in terms of the density that actually can be allowed. I think you are raising the
13 question of whether or not there ought to be a higher standard or higher FAR in the
14 standard. I think our judgment generally is that you want the FAR limitation in the standard
15 method to sort of reach that level that is high enough that people can do something of
16 right, but that the difference between that and what they can obtain in the optional method
17 is enough to really give an incentive to go optional method. Fundamentally, you do not
18 want to encourage the use of the standard method in these areas that are designed for
19 high density. If you encourage the use of the standard method in these areas, what you
20 do is you establish for a long period of time a level of density that is below that that should
21 be achieved for the area to make it function efficiently and you encourage them, pressure
22 to use that capacity somewhere else.

23 ROGER BERLINER: Mr. Chairman, if I could just re-claim my time a little in this
24 conversation, you are absolutely right that from my perspective one of the issues that I
25 have been struggling with is the question of what the ceiling should be for the standard
26 method. I believe you have it as .5. We've had conversations with staff present with
27 developers who have said we understand the desire to go to optional and for most of the
28 properties the optional method will be what is developed. But to kick start in the area, one
29 needs to have cash flow, that the way in which these projects, these huge projects in this
30 economic climate will in fact come about is that some projects will be built first that will be
31 smaller in order to generate cash flow that will then be the basis upon which the rest of the
32 project moves forward.

33 ROYCE HANSON: Baloney. You know, that really should be accompanied by violin
34 music. The Board hears these arguments everyday. I think in some cases, you know, it's
35 not really baloney.

36 ROGER BERLINER: Pastrami If we get to roast beef, then I know you actually like it?

37 ROYCE HANSON: It's less nourishing than prime rib, let's say. The-- but these are not
38 unusual arguments for allowing more density of right and they are sometimes really very
39 interesting. But I think we have--you're thinking about your long range area. What do you
40 want to achieve in the area? Do you want to achieve only what you can get under the
41 standard method for the foreseeable future? Or do you really want to see land developed
42 as you envision it ought to develop? It is up to you.



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1 MICHAEL KNAPP: Councilmember Leventhal.

2 GEORGE LEVENTHAL: Well, I listened with great interest to the last conversation the
3 Council had on this topic and I thought I pretty much grasp it and I was pretty comfortable
4 with the concept of the TMX zone and its applicability to multiple planning areas. And I
5 think I'm still mostly there. I have read through the concerns of some of the property
6 owners in the White Flint sector and I understand that they feel that it's not fair in effect to
7 down-zone them under what they otherwise would be able to do under the standard
8 method. But I also understand what the chairman is saying that we really do not want
9 them to use the standard method in a high density area. And our vocabulary is wrong. We
10 probably ought not call it the standard method anymore. I mean, you know, what we really
11 them to opt for a method that has more mixed-use, a variety of options. I mean, we're sort
12 of trapped in our own vocabulary here because in effect this isn't even a Euclidean zone.
13 Euclidean zoning is the problem. We are no longer--in the 21st century--we're no longer at
14 a place where when we want the houses way over here and the jobs way over here and
15 the industry way over here and the shopping way over here. That's exactly what we don't
16 want. We want everything mixed together. So, we have this mixed zone but we are calling
17 it a Euclidean zone because it is within a boundary that is defined.

18 ROYCE HANSON: It's a hybrid zone.

19 GEORGE LEVENTHAL: But it is a different tool, so we are using a different vocabulary.
20 So, some of the words that we have used in the past aren't applicable any longer,
21 including standard method and optional method. So, I think we're getting hang-up a little
22 bit on terminology that may be outdated and may not be descriptive. What I don't--I am
23 generally comfortable with the approach and I understand that we will use the tools
24 available to us in the master planning process to define specifically what is our vision for
25 White Flint, for Germantown, for any other area where we apply this. I understand that you
26 have what is allowed under the zone but that may not be the same as what is allowed
27 under the master plan and the master plan is more specific to the area defined in the
28 master plan. What I do not get from the exchange between Mr. Berliner and Chairman
29 Hanson is where did Jeff recommend? Is it in the packet that this apply only to
30 Twinbrook?

31 JEFF ZYONTZ: No, that it-- remember, I am not the applier of where the zoning lands. I
32 am the creator of zones, if you will.

33 GEORGE LEVENTHAL: The staffer of the County Council Planning. No, come on. I
34 mean, we're the County Council and we are going to work through this. And we appreciate
35 the input of the Planning Board. We appreciate the input of our staff and we're the County
36 Council and the buck stops here. And I'm just trying to understand the basis for this very
37 lively exchange that I have been a witness to here. Where did Jeff propose that this zone
38 only apply in one master planning area?

39 JEFF ZYONTZ: I did not say that it should apply in one master plan. What I said is that
40 you should have a series of zones at different intervals.

41 GEORGE LEVENTHAL: Where? Where did you say that? Is that in the packet?

42 WOMAN: Bottom of page two, yes.

43 JEFF ZYONTZ: It was certainly on page two for the updated one and in the...



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1 GEORGE LEVENTHAL: Okay, the staff recommended to the Committee that the TMX
2 zone be established as a series of zones instead of a single zone. Now, I mean, we have
3 R 1, R 2, R 60, R 90. We have C 1, C2. It's not unusual that you create a category and
4 then you have different intensity in those categories. That's not an assault on master
5 plans. It's not an assault on anybody's authority. We have other zones that work that way.
6 JEFF ZYONTZ: It's--and directly on line with central business districts.

7 GEORGE LEVENTHAL: CBD 1, CBD 2. We have that also.

8
9 MICHAEL KNAPP: That's the point that the Committee wrestled with when it looked at the
10 TMX zone and I think it became more clear to us as the full Council had its worksession
11 two weeks ago was that if people were wrestling with, can you take kind of this single
12 zone and apply it in the ways that we think we want to apply in all these other places or do
13 we end up having a debate about all these other places that we're not really having a
14 debate about right now. It doesn't make more sense to potentially have it--parcel it out and
15 have a TMX 1, 2, 3, 4 similar to a CBD 1, 2, 3, 4 because then, we can modify those
16 entities according to the master plans which we're looking. Right, not having been privied
17 to that discussion in Committee and I don't recollect this particular aspect. I may have
18 been out of the room, if it came before the full council. I listened carefully to the TMX
19 discussion, although, I actually did have to leave for another thing. So, no one is
20 proposing that there be TMX Twinbrook and a TMX White Flint, and a TMX Germantown.
21 That's not before us.

22 JEFF ZYONTZ: Absolutely not.

23 ROYCE HANSON: But that's a practical thing.

24 JEFF ZYONTZ: And well--

25 GEORGE LEVENTHAL: Well, I guess, there would be others who would say it's not the
26 practical thing. And we don't have a CBD Silver Spring and a CBD Wheaton and a CBD
27 Bethesda. We have different intensity based on the vision for different areas but you could
28 apply them in any master plan.

29 JEFF ZYONTZ: Or you can apply them in multiple zones in a single area. You know, if
30 there are two zones that are appropriate in White Flint, that's what you would do, you
31 would have a four and a two. And I don't know if you would have others but again, from
32 the standpoint of somebody who looks at zoning, looks at a zoning map, you at least have
33 some idea of a rational maximum. There is not so much flexibility.

34 GEORGE LEVENTHAL: Okay, okay. Let me just ask the Council President and
35 Committee Chair who's bringing this before us. What is your vision for how this is going to
36 play out? I mean this particular issue which has been the focus of some heat here. Is
37 there a Zyontz proposal that we're going to have to vote on? I mean, what is actually
38 before us? All right, does the committee is--are we going to vote up or down the
39 Committee recommendation and in what time frame do you have for it?

40
41 MICHAEL KNAPP: It's not the Zyontz proposal. I think the Committee went back and forth
42 listening to the comments that were made two weeks ago to see that a discussion that
43 had occurred in the Committee discussion was relevant for the full Council and would



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1 allow us to move this forward because otherwise, we're going to debate about White Flint.
2 So, given the conversation that was there, I want people to understand what a TMX-1234
3 was relative to just the concept of a TMX which I think--

4 GEORGE LEVENTHAL: But that is not the Committee's recommendation?

5
6 MICHAEL KNAPP: It is not. That is not what the Committee had come forward with, but I
7 think the Committee in consultation through Mr. Zyontz is comfortable with moving
8 towards a TMX-2 for Twinbrook. But I know that there were others who wanted an
9 understanding of what that would mean, which is what this conversation has been.

10 GEORGE LEVENTHAL: Two being an FAR 2?

11
12 MICHAEL KNAPP: Yes, correct. And so, my--what I wanted to have people do is to have
13 an understanding of what that meant. And my goal is to try to, if possible, move through
14 items 8 and 9 prior to us breaking for lunch, and then coming back to the Twinbrook
15 master plan once we can--once we do oral arguments and the update from Department of
16 Health and Human Services after this. That's my goal.

17 ROYCE HANSON: Could I ask you a question on this? If you do a TMX-2, I do want to go
18 back to it, because I was thinking of it as something we'd only use in Twinbrook. But if
19 you're going to use that or expect us to use it and recommend it to you in other places, I
20 think you do need to revisit the maximum density for the standard method, because while
21 we've been talking about the spread from 0.5 to 4 for the zone, and I acknowledged that
22 the master plan undercuts that by recommending it only go up to 1, in some cases, or
23 possibly even less one in some cases. But if we're applying it in a family of zones, say
24 TMX-1 through 4, then it seems to me that it would logical, at least, to have the standard
25 method vary as it does in the CBD zones from 1 to three or from 0.5 to 3, something like
26 that. That might address--but I think we got to really look at this. I sort of hate to do this on
27 the fly because I thought the Committee had made a recommendation to stay with the
28 zone as proposed. I would suggest if you've extended to January, let us go back and look
29 at this. Frankly, I think this is moving us back into the 20th century, instead of forward, but--
30 -

31
32 MICHAEL KNAPP: Okay.

33 GEORGE LEVENTHAL: I think I still have the floor. Let me just Mike --what I'm about to
34 say is, I think, consistent with what Royce just said and that is if we're going to look at a
35 TMX-1, TMX-2, TMX-3, TMX-4, I'd want to see those elucidated. What are the pluses and
36 minuses? And when I say pluses and minuses, I mean for the property owners, because I
37 was able, I think, again, recognizing that the words "standard" and "optional" may no
38 longer be descriptive of what we're really talking about. And I heard, I read the letters in
39 the impassioned protests of people who are saying "You're down-zoning me," but when
40 we were last here, I asked about what does an FAR of 4 mean? And oh my gosh, it's a
41 really big building. It's bigger than any other building in Montgomery County today. It's
42 bigger than Nuclear Regulatory Commission. It's bigger than RIO. And even the burden of
43 the BLT requirement, which I don't understand. Would that be contained in the TMX-2? I



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1 mean, there's just stuff I don't understand here. Well, there's the equities there. I mean,
2 you know, I could deal with, what I guess we're now going to call a TMX-4 in so far as
3 understanding that it was intended for White Flint. We already have some golly wow big
4 buildings and these would be a few more really big buildings right at a major metro area. I
5 do not know how that applies in Germantown. And if you're going to create a different, you
6 know, if Germantown is going to be TMX-1 now, are you still going to apply the BLTs
7 there? I mean if that's before us, what I don't have before I cast my vote is a description of
8 these different categories. And what do you give up? What do you get? Right? So, if
9 you're saying, we're already entitled to FAR of 2. I own land at White Flint and I'm already
10 entitled to FAR of 2. Now, you're saying I can only get .5 unless I agree to pay the BLTs,
11 buy the BLTs. And then in return for that, wow, you get FAR of 4. That's a lot, so that
12 made sense to me, putting aside the words "standard option". Okay, and understanding
13 that it's still going to be limited by the master plan. Not everyone's automatically going to
14 get a FAR of 4. I don't want to scare everybody and say there going to be, you know,
15 we're going to not recognize White Flint. I got that. This is complicated stuff but I
16 understood that. Now we're throwing out some things that I don't understand. So I don't
17 understand what the trade-offs are. I don't understand "What do you give?" and "What do
18 you get in TMX-1, TMX-2, TMX-3?" I think I understood TMX-4. Now you're throwing
19 something new at me. I wasn't in the PHED Committee. So before I'd raise my hand and
20 vote on that, I would benefit from both Mr. Zyontz laying out that and frankly, you know, if
21 the Planning Board wants to take another crack at it if it doesn't offend their sensibilities
22 too much, you know, maybe we could get some input from them on that because I don't
23 grasp that. And I was ready to vote today on TMX as we discussed it at our last meeting.

24
25 MICHAEL KNAPP: That's a fair point. And as far as it been, it's only been in the last 24
26 hours or so that people have been talking about this, that the notion of differentiating the
27 TMX zones from the Board of Council's kind of come out.

28 JEFF ZYONTZ: The only thing I must say, Councilmember Leventhal, is that this was
29 advertised as a TMX zone so you couldn't adopt multiple zones without re-advertising. So,
30 the recommendation that I had in the packet was to create this as a TMX-2 zone and then
31 in the future, adopt other zones. I would--everything would be exactly the same. The
32 Chairman had it exactly correct. The only difference would be the table on standards
33 would be different for the different zones. But you can't do multiple zones unless we go
34 out re-advertise it again.

35 GEORGE LEVENTHAL: But I don't--yeah but see, we've heard from property owners with
36 respect to White Flint. Now, we're proposing something new and different. I think it is fair
37 that people have a chance to give us input. If there's a new TMX-2, I don't-

38
39 MICHAEL KNAPP: No, it's not a new TMX-2. What has been defined as TMX would--for
40 this proposal, would be TMX-2.

41 ROYCE HANSON: You don't even have to add the two. All you do is to just cut it down.

42 GEORGE LEVENTHAL: But you're only providing FAR of 2.

43 ROYCE HANSON: And then you give us no tool to work with.



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1 GEORGE LEVENTHAL: And you're still imposing the BLT requirement.

2 JEFF ZYONTZ: Yes.

3 ROYCE HANSON: Right.

4 MARLENE MICHAELSON: Yes.

5 GEORGE LEVENTHAL: For Twinbrook.

6 JEFF ZYONTZ: It would satisfy Twinbrook. It would not satisfy White Flint. What it would
7 mean when you got to White Flint is there would have to be a proposal for a parallel zone.

8 GEORGE LEVENTHAL: TMX-4.

9 JEFF ZYONTZ: Or whatever else the--TMX-4.

10 GEORGE LEVENTHAL: Presumably And so that is now the committee's recommendation
11 TMX-2? And that's all we're doing right now? Okay. I apologize. I wasn't part of the
12 Committee's discussion. I'm trying to understand what it is before us. And so on behalf of
13 the Planning Board, the Chairman simply feels that FAR of 2 is too little. You have a
14 grander vision for metro station areas.

15 ROYCE HANSON: Yes. If you essentially cap TMX at this point, I, you know, whether we
16 would have come up with a new TMX zone or not, I don't know. I think I would want to ask
17 our staff and our board to do some more thinking. We're trying to move the zoning system
18 beyond where it has been stuck for so many years. I think it reopens a lot of issues that
19 we thought we had, at this point, begun to resolve in our worksessions on White Flint also
20 by having one zone that could be used in a number of places. We will have to create new
21 zones.

22 GEORGE LEVENTHAL: Okay. And, Mr. President, is the bottom line here that the FED
23 Committee simply thinks that the FAR of 4 it is too much for Twinbrook?

25 MICHAEL KNAPP: No. The challenge that we're running into but one of us as--yeah.

26 ROYCE HANSON: You know, I think all of us are.

28 MICHAEL KNAPP: The challenge that we're running into was, all of the questions we're
29 getting two weeks ago, kept debating as to what the impact of this would be in a White
30 Flint or a Germantown as opposed to looking at Twinbrook. And so what we tried to figure
31 out was is there a way to address TMX in the context of Twinbrook that people
32 understood that didn't keep us having to try to figure out how to debate what this--what the
33 impact would be on White Flint or Germantown, since those are going to come before us
34 in the next year.

35 GEORGE LEVENTHAL: Okay. But again, I'm trying to understand. This is before us from
36 the Committee. If we had gone with what was before us a few weeks ago, the zone, as
37 applied in Twinbrook, under the zone, you might get FAR of 4. But under the master plan,
38 you'll likely wouldn't. In fact, under the master plan they send us over, you wouldn't.

40 MICHAEL KNAPP: Right, right.

41 GEORGE LEVENTHAL: And--but that was to--that scared the committee. They thought
42 that--



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1 MICHAEL KNAPP: No, it didn't.

2 GEORGE LEVENTHAL: So why not go with the--so I don't understand. Why not go with
3 the original proposal for Twinbrook?

4
5 MICHAEL KNAPP: The TMX zone is here is--this is the TMX for Twinbrook. This would be
6 TMX-2.

7 GEORGE LEVENTHAL: But you're limiting it to 2 FAR.

8
9 MICHAEL KNAPP: That's--yes. That's--which is already defined in the master plan
10 anyway. Right.

11 MARLENE MICHAELSON: And if I can just add--

12 GEORGE LEVENTHAL: I'm with the Planning Board on this one. I mean we had zones
13 now in CBDs that allow greater height that the master plan allows. And that can come
14 before us every time anyway. But generally, I mean we have as great respect for master
15 plans here in this county and definitely it's--

16 MARLENE MICHAELSON: And if I could just add something that I don't think has been
17 put on the table, which is a very long-term perspective and one that the planning
18 department staff have had presented for multiple years, which was to have a nest of
19 zones at different densities that would be mixed-use, perhaps with the vision of ultimately
20 collapsing what is being considered the TMX with CBD and other mixed-use zones. And I
21 could never picture us saying, we're going to take all of the CBD zones that have different
22 densities and replace them all with a single TMX zone. I think that would be a problem,
23 but I could see getting to a point. And we probably have to do a lot of work to get there,
24 but I could see getting to a point where we replace TMX-2 for CBD 2. And we try and have
25 simplified streamline mixed-use zones that work at multiple locations, given that our
26 existing mixed-use zone are all linked to densities. I think it's very hard--not only very hard
27 to move away from there, but it provides, in my mind, a lack of clarity which I think Jeff
28 went to before. It makes it easier for people to understand the different densities.

29
30 MICHAEL KNAPP: Councilmember Floreen.

31 NANCY FLOREEN: This--we've had this zone since June, basically. And I think we've
32 seen earlier drafts before we got to it. And likewise we've had the plans. Well, I think this
33 works fine for Twinbrook. Does it work for White Flint and Germantown? I have no idea.
34 But everybody else out there has a point of view. And why is that, because they're
35 engaged in all these conversations that are occurring. And they come to us, the
36 community comes to us. "Oh, we're--don't do this, do that." And it's not tolerable for us, I
37 think, to handle an overarching zone, to solve problems that we haven't familiarized
38 ourselves with. And I think that's--to put it in a nutshell, that's all this is. One could argue
39 and I'm happy to engage in a long argument about who does what where. Is the master
40 plan the most ideal location at the rate we're lumbering along to resolve community
41 problems? I don't think so. I think the zones need to be more nimble. But that--this is
42 where we are and I just say, let's move on. The conversations that are occurring about
43 hypothetical issues in other situations, which we are not familiar, and are not prepared to



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1 respond. We've got an army of lobbyists and community people who have issues that are
2 not before us; but they think we're solving their issues otherwise if we don't just agree that
3 this is the zone for this plan. And maybe it will be the zone for another plan. And maybe it
4 won't. We don't know. We just do not know. So I think that's fine. We can't solve
5 everybody's problems today. And I'm sorry that the Chair has an issue with it. But for us
6 who have to balance all these things. And to try to listen to as many people as we can,
7 this is the only way to go for the time being. I think the challenge, and perhaps, the
8 communication is misunderstood that this is the end of the other solutions that people
9 have assumed for other locations. Maybe. Maybe not. I don't know. I think we can agree
10 we do not know. That's the best that can be said. Let's get on to Twinbrook though.

11
12 MICHAEL KNAPP: Councilmember Elrich.

13 MARC ELRICH: I think there are a couple of things that are getting--that are overlapping
14 each other, unfortunately. One is the effort to try to accomplish a new zone. It gave us
15 more flexibility and made more sense than the CBD zones. And I think that's what TMX
16 does. And so, if you've accomplished that, that's a good thing. I anticipate fully that a TMX
17 zone, exactly as is written, apply--will apply to Germantown, Twinbrook, and White Flint.
18 And I agree with Marlene that it wouldn't be a bad idea to, at some point, revisit what
19 happens to the Central Business Districts and come up with a zone that isn't quite as rigid
20 as the CBD zones. Whether or not we put a height limit or a density limit in different parts
21 of the county doesn't do anything to undermine what you're saying you doing in the
22 master plan because I don't understand why we even need to revisit the standard method
23 issue. I mean Roger and others may have some issues that the developers have about
24 this may or may not be fair, but if it was okay to say in Germantown that we were going to
25 have a TMX zone with this standard method and this was going to be what was written
26 into the master plan for density, and the same standard method applied in Twinbrook, and
27 the master plan dictated a different density and the same standard method applied in
28 White Oak, and the master plan dictated, yet, a third density, I don't see where having a
29 uniform standard method in any TMX zone conflicts with what you've done essentially
30 already. All I want to do is control the TMX zones for what the maximum density is. I want
31 to avoid, to some extent what George alluded to, the thing that bothers me most is--well, I
32 have a list of things that bothers me most. One of them which references to
33 notwithstanding the master plan, if condition X is met, you may build up to the underlying
34 zone. And so, to me, it would be a big problem to have an underlying zone with an FAR of
35 4. Then somebody comes in and says, "My project is so special that this Council will then
36 write a ZTA, which will say, this is so special. We're going to let you build to the underlying
37 zone to which no one in the community has bought off on, to which is not at all consistent
38 with the vision of the master plan that was constructed. But you've got this gaping hole in
39 there that lets you do that since we've done that, and I've seen bills with that language in
40 it. I would like to minimize the opportunity for us to get around the master plan and say,
41 "All you guys get to fill up the underlying zone." So that, to me, is the sort of what brought
42 me back to looking at the variable densities. As I said before, I would've liked to have
43 implemented this to the division that I thought we were going on where you, basically, a



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1 developer, would get a drawing of what Twinbrook or any of these other places would look
2 like and you would say, "I own this parcel," and the Planning Board would open up the
3 book and say, "This is the building that goes on this parcel. This is the setback. This is the
4 height. This is the density." And you'd begin to build out the thing the way it looks in the
5 book. But we're not there. And so, I'm not comfortable being there.

6 ROYCE HANSON: Could I comment on--?

7 MARC ELRICH: Well, maybe you might have a couple of things you want to comment
8 now. Let's see. The other thing about the optional method densities--and this is another
9 concern I have. Instead of hearing what's the discussion on what's the optional density for
10 an area based on planning, what I'm increasingly hearing, what's the density required to
11 give them an optional method to make it worth their while to tear down an existing
12 extremely profitable shopping center and do something else? That's different than a
13 planning question about what's the right density, and the right design for this community.
14 When you're opting for densities based on the developers saying, "You know, I yield \$11
15 million a year income off this strip center, you've got to make it worth my while to knock
16 down the strip center, forego two years of income, maybe three years of income, and then
17 build a new project." You're not engaging in planning based on what's best for the
18 community on height and setbacks of anything else. You're engaged in planning based on
19 what do I need to do to incentivize something to build some--incentivize somebody to
20 build something bigger. And I don't think we should be going there. I think your plans, and
21 what we lay out ought to be what's the best design and what's the best fit for the
22 community; not how much do I have to give somebody in order to get them to tear down
23 the strip center and build something bigger and whatever it takes. How much bigness I
24 have to give them is okay because it's better than the strip center. And I understand the
25 tension between standard method projects, and what we don't want to see, and what we
26 want to move people to. But I think that we can go too far in the other direction and let the
27 individual property owners' definition of profitability start driving the planning process. And
28 I just don't think that's--I think that actually messes with the integrity of the planning
29 process. If we start doing that, and we start laying out zones in the county, based on
30 people saying, "If you want me to do that, you have to give me this," we're going to have a
31 very different, I think a very unfortunate planning process and the communities will get
32 completely wiped out of that because, then, it's like, you know, a bunch of masters saying,
33 "This is my vision, and what do I have to give you to get--to achieve my vision," and the
34 community just kind of plays on the sideline there. So I'm leery about going off in that
35 direction. I guess, the final thing I'd say is I wouldn't mind passing the TMX today with the
36 two in it knowing that we're going to come back and give you an identical TMX zone with
37 all the words the same except for whatever you need to write, to write the density different
38 for Twinbrook. And I actually mean for White Flint, and I would actually hope that when
39 you get to White Flint that there'd be parts of White Flint that would be TMX-2 because
40 you have no intention as you would say in the master plan of going above the density of
41 two and there'll be parts of White Flint that'll be TMX-4 because that's where it's
42 appropriate. But I would be really worried about having TMX-4 laid over all of White Flint



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1 from the border of the residential neighborhoods, to the metro station on 355. So, now you
2 can yell at me.

3 ROYCE HANSON: Let me just comment on several things. I agree with you that we
4 should not be basing our plans for what occur in an area on the opening of a property
5 owner with regard to the value of his current structure. We face that problem all the time.
6 It's similar to the problem that existed with the assembly requirements, for instance, for
7 optional method. If you have to have 18,000 square feet, and a lot of people have got
8 5,000 square foot parcel, and it's returning a good income and they're not in the
9 development business. And the incentive to get them either to assemble or if they've
10 already got a half acre or something of land, or a shopping center that's returning a good
11 profit, they may not make use of the optional method. And we can't make people
12 redevelop. We can't force people to assemble. What we can try to do is provide a
13 sufficient incentive in terms of the density gradient that is provided, the density differential
14 that's provided between standard and optional method to encourage assembly and
15 redevelopment to achieve what we want to achieve. I--you know, as recent as last night,
16 we were talking with developers about whether they could have more than we were
17 proposing to provide, or when they could have more than we were proposing to provide.
18 In some cases, looking at the situation, an argument can be made, and you can say,
19 "Okay. We can adjust what we're doing to achieve what we want to achieve." In other
20 cases, I think you say no. We think this is enough. That's what works best for this piece of
21 land in the context of the whole planning area that we're working with. And we have to try
22 to balance those concerns and those interests. What we've been trying to do in each of
23 these master plans is to think through what the appropriate density for the area is if it
24 develops at its maximum allowable under the plan. I emphasize the maximum allowable
25 under the plan. No one has a right to the maximum allowable under the zone. What the
26 maximum allowable is the maximum allowable. It's not the right to build to that point. I
27 think that if you basically--what I would urge you to do is just--if you're going to go this
28 way--is not change the name of the zone just--because I don't know if we'll come back
29 with another TMX zone. We're going to have to rethink. The staff is going to have to
30 rethink what we were proposing, what they were proposing, and what we've worked
31 through several sessions on now for White Flint to know whether we're going to
32 recommend something different than the TMX zone there or not. Well, I just think we go to
33 rethink it. I, you know, I'm leery of proceeding on the assumption that we will get a family
34 that is--has more FAR in it than 2. Yeah.

35 MARC ELRICH: Even I'd support a FAR of 2 in some places so I mean--I mean, I don't
36 hear anybody out saying--

37 ROYCE HANSON: But you're talking now a standard method of one, an option of two.

38 MARC ELRICH: In a place that you--

39
40 MICHAEL KNAPP: No.

41 MARC ELRICH: In a place that you said--

42 ROYCE HANSON: I'm sorry, 0.5.



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1 MARC ELRICH: Exactly what you said you wanted in Twinbrook. That's all right. That's
2 what--

3 ROYCE HANSON: Yes, you're doing fine for Twinbrook.

4 MARC ELRICH: Okay.

5 ROYCE HANSON: You're just--I think, I just got to think about it. I'm sorry. I just really feel
6 sandbagged on it.

7 MARC ELRICH: Just to be clear, Royce. If you came back with a TMX zone 4 that was
8 identical to this, that instead of--and it just said four, then I would vote for the--to having
9 you the ability to have a TMX-4 and then you would look at a place you'd say this is the
10 right place for TMX-4.

11
12 MICHAEL KNAPP: Last comment and then we'll resolve this issue and moving to other
13 specific issues within--

14 ROGER BERLINER: Whether we resolve it or postpone it--but in any event, Mr.
15 Chairman, I thought I heard you say and I could be wrong, many minutes ago, that you
16 would look at a range of standard, of what the standard should be, that, perhaps, there
17 could be some flexibility instead of it always being 0.5, maybe there would be some
18 elasticity to that. Did I hear you correctly allude to that possibility? Did you approach that?

19 ROYCE HANSON: Well, I think that's one thing we should all consider.

20 ROGER BERLINER: Well, all I can tell you is that from my perspective, that's the biggest
21 stumbling block I have with respect to adopting this TMX zone across the board, because
22 there's not that flexibility in it. It is 0.5 for all TMX wherever we apply the TMX zone. So if
23 you were to modify the TMX zone such that it gave you the flexibility of changing the
24 standard method to a different FAR in future situations, that would be another way to
25 accommodate at least this member's concern about what I'm being asked to vote on in
26 this moment, which isn't to say that you would always change from 0.5; but if you would
27 give yourself at least the flexibility of doing so, it's another way of addressing the initial--

28 ROYCE HANSON: We had initially recommended a range in the standard. But I think we
29 agreed, ultimately, that it's probably better to have a single figure in the standard. We
30 originally suggested the 0.25 to 0.5. I don't think--

31 ROGER BERLINER: Anybody's prepared to go above 0.5--

32 ROYCE HANSON: Frankly--

33 ROGER BERLINER: 0.75 is off the table.

34 ROYCE HANSON: This is one I don't know where the board would be on it. My initial
35 judgment would be not to go above 0.5.

36
37 MICHAEL KNAPP: Okay. So I guess now the question before us is that can the
38 committee come back with looking at this establishing this has the TMX, pick a number,
39 don't pick a number zone; but the TMX that will be approved today, that we'd likely call
40 TMX-2 or a--

41 JEFF ZYONTZ: Or--the Chairman's right. Since there's only one, you could call it T--he
42 leave it at a TMX, and then come back and provided for multiple zones when they come
43 back.



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1
2 MICHAEL KNAPP: So in the course of conversation, I have generally heard people
3 moving in that direction, but I want to get a sense out of straw vote from the council, is that
4 moving to a tiered effective of TMX zone so this would be the TMX-2, TMX A. We can call
5 it TMX which is for sake of clarity. Is that the direction that the Council would like to go?
6 And so, I would ask, I guess, for a show of hands for that if the Committee's
7 recommendations. is to move the TMX--

8 ROGER BERLINER: Can I ask for clarification?
9

10 MICHAEL KNAPP: Sure.

11 ROGER BERLINER: And the clarification goes to whether or not it is envisioned that for
12 purposes of this TMX zone that we are establishing an FAR ceiling of 2. Is that what we're
13 doing in this? So, regardless of what we're calling it, for this particular zone, which we do
14 not believe would be applicable to White Flint, Mr. Chairman, that no one's--
15

16 MICHAEL KNAPP: All of White Flint?

17 ROGER BERLINER: All of White Flint. That it's certainly not this member's point of view
18 that it should be so limited--But, okay, that's--thank you.
19

20 MICHAEL KNAPP: So I would see. I guess so just kind of a show of hands those in
21 support of moving in that direction of having that established as a TMX-2--FAR of 2.
22 Indicate by raising your hand. That is unanimous among those present, which are seven
23 of the nine. So that would carry, okay. So, now we turn back to see if there are specific
24 questions as it relates to other elements of the zone itself.

25 MARC ELRICH: Can I follow up on that, just a question for Jeff? Could you, in a reason,
26 how hard would it be to create a TMX-4?

27 JEFF ZYONTZ: It's not hard at all. It's just that you can only adopt one under the
28 advertisement that you made.

29 MARC ELRICH: Okay. So if we can do an advertisement for multiple TMX zones and then
30 have a hearing on multiple TMX zones--

31 JEFF ZYONTZ: You could do that, and not adopt this one if you wanted to.

32 MARC ELRICH: Well, I'd like to adopt this one. I would just urge the Council to consider
33 creating that. So, there is no ambiguity about what it is we intend on doing and so on.

34 JEFF ZYONTZ: And if you're doing that again, I--you should, I think, adopt it as TMX-2 so
35 that you don't have to change the numbering if you add up the zones. So, I could--I had
36 suggested some language to accomplish this

37 MARC ELRICH: (inaudible)

38 JEFF ZYONTZ:--On page 13, under E, and I think I would just add a line to that. It all
39 references to the TMX zone applied to the TMX-2 zone. And that way, on a map, you'll
40 have a TMX-2, and then you won't have to change the number if you adopt to other
41 zones. Okay. All right, moving on just to the committee's recommendations--and this goes
42 back to when it was introduced. The Planning Board had submitted a complete redraft
43 from what was introduced much of which the committee adopted. Certainly, it had a



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1 maximum of--for every, a ratio in the standard of 0.5 with increases for MPDUs in
2 workforce housing, a maximum height of 42 feet on landscaping immediately in front of
3 the development standard method. Development is also required to do site plan. So that is
4 different than the CBD zones. In optional methods of developing, you now have an FAR of
5 2 with increases for MPDU in workforce housing. Criteria for height and density, but no
6 maximum height in the zone, design principles, a requirement for building lot termination
7 for the density above the standard method development, but that BLT requirement only
8 applies to things that do not have to provide workforce housing. So essentially, if you have
9 high density development where you're providing workforce housing, that element of your
10 project doesn't have to provide BLTs. An applicant's option to avoid project plan if the
11 project also requires a subdivision, this is identical to Wheaton. And payments instead of
12 providing onsite amenities for use to the same transit zone. In land uses, the committee
13 voted for all things that were the same as the TOMA zone in the central business zones.
14 And I've noted an error in what was presented to the Council. One of the land uses that
15 was in the CBD zones, but not reported as a permitted uses in this was automobile repair.
16 So, if you wanted to be consistent with the Central Business Districts, you would put
17 automobile repair as a permitted use. I raised that with the committee, but I found it as an
18 error. Okay? The TMX development should be consistent with the apical master plan.
19 Chairman Hanson noted a problem on Line 333 where it said that the development must
20 follow design guidelines. I think he is correct that the term there should be "consistent".
21 That would also be a change post to the Committee. The transfer of density should be
22 required for 18,000 square feet of land at a minimum unless otherwise recommended by a
23 master plan, the sector plan. The transfer should leave the sending property with standard
24 massive density, unless the sending site is recommended for open space. And this was
25 something the committee talked about a lot. And the grandfathering provision should be
26 expanded from what was introduced to include all approved development plans, approved
27 preliminary plans, and including amendments to those plans. That was the Committee's
28 recommendations. There are a number of things based on the submissions we received
29 after the Committee's recommendations that I just want to raise to the Council's attention,
30 if you'd like me to do that now or would you--?

31
32 MICHAEL KNAPP: Yes.

33 JEFF ZYONTZ: I mentioned auto repair--

34
35 MICHAEL KNAPP: Oh yes, any questions at all on what the recommendations have been
36 today? Okay. Go ahead.

37 JEFF ZYONTZ: I mentioned auto repair which I thought was an error. One of the
38 recommendations we had was to allow--to not require a setback if the adjoining lot had no
39 windows or openings on its side, or you had no opening or windows on your side of the
40 property. Essentially, that is more or less standard in cities where you don't require that
41 setback so that you can be right at your property line. And I thought that was a good
42 addition to not require that setback in the standard method. The other--I mentioned a line,
43 a 30--a 330 change that the chairman noted. I would also--



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1
2 MICHAEL KNAPP: Where are you, Jeff? Just so people following around knows exactly
3 where--

4 JEFF ZYONTZ: These are the recommendations of the bottom of page 2.
5

6 MICHAEL KNAPP: Okay. Here we are.

7 JEFF ZYONTZ: And the last thing was that there was a recommendation to reduce
8 parking for retail. I was provided with documentation and the numbers from Arlington.
9 Based on those, I recommended reductions in retail use parking to only require four
10 spaces per thousand instead of the five spaces per thousand that are now required. And I
11 think I provided a draft exactly of what I would do to the document. And on page 14 circles
12 C on top, a minimum parking space called for general retail and restaurant uses four
13 spaces for every thousand. Gross leaseable area if less than 20% of gross leasable area
14 is devoted to restaurant use. I think that will help out some of the parking requirements
15 and reduce some of the development obligations in which should offset the cost of BLTs.
16 That's it.
17

18 MICHAEL KNAPP: Councilmember Floreen.

19 NANCY FLOREEN: I would just move those amendments. It's a [inaudible] step to take.
20

21 MICHAEL KNAPP: Objection about any of this?

22 JEFF ZYONTZ: Is this with respect to grandfathering, Mr. Chairman or--?
23

24 MICHAEL KNAPP: All of it.

25 ROYCE HANSON: There's a couple of things that I'd like to mention to you.
26

27 MICHAEL KNAPP: Let's just see. So, given that the elements that Mr. Zyontz just ran
28 through, is there any objection to including those as amendments to today's
29 recommendation? I do not see any. Okay. No questions. Mr. Chairman?

30 ROYCE HANSON: I just want to--I'm not sure whether you've already did one of those or
31 not. On lines 335 to 338, this deals with the project plan issue. And again, I just wanted to
32 emphasize the point that I had made the other day that we can't determine if an
33 application meets all the requirements of the project plan without project plan or a
34 reasonable facsimile thereof. We don't have any problem with simultaneous submission of
35 project plans with the subdivision. But we have suggested that in lieu of the second
36 sentence there, I believe that the project subject to subdivision under 50 have the option
37 of submitting a project plan. But simply to say instead as on the underlined at the top of
38 the page on circle 65 that projects that are subject to subdivision under chapter 50 may
39 simultaneously submit a division 59D2 project plan. The reason for that is that so they can
40 submit the two together, but we would really like to have the application fee for the work
41 that we're going to do, to determine whether or not the subdivision meets the
42 requirements of the project plan. Otherwise, we get both applications. We're provided
43 funding for only one.



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1 MARC ELRICH: Do we address that here?
2 ROYCE HANSON: What?
3 MARC ELRICH: Do we have to address that here or do we address that somewhere else?
4 ROYCE HANSON: If you leave the language as Jeff has it, we won't get the fee.
5
6 MICHAEL KNAPP: So the issue is one of not necessarily better or worse process, but the
7 issue is the fact that we have money potentially, you think we're leaving on the table.
8 ROYCE HANSON: Yeah. Well, we are asked to support as much of the development
9 review process as we can from fees. This is an important part of the development review
10 process.
11 JEFF ZYONTZ: I mean if they got a whole number of projects on this, you would suspect
12 a change to the preliminary or the project plan fee. I'm sorry. The subdivision fee
13 application because you would have more total cost within subdivisions. And you would
14 divide that among all of these users.
15
16 MICHAEL KNAPP: Councilmember Floreen?
17 NANCY FLOREEN: Well, I was just wondering. I mean I know you do not like this
18 provision. I think it's the appropriate one--
19 ROYCE HANSON: I do not have any problem with the provision.
20 NANCY FLOREEN: Good. You just want the money.
21 ROYCE HANSON: That is right.
22 NANCY FLOREEN: Well, you know, the point of this is not supposed to be a fee-gen. The
23 focus is that--of this is not generating fees. The focus of this is delivering to the community
24 the kinds of projects we think are appropriate. And sure, there's a cost. I'm just wondering,
25 Jeff, about the language that you have on line 337. You say "Meet the requirements of
26 59D2..." and so forth. Would it be a better to say "Achieved the objectives"? Being so, you
27 don't have the situation of where if it says, you have to meet the requirements, that
28 means--sort of implies that you have to have actually submitted such a--we might have
29 not have achieved the intended object which is to avoid that and submit that whole project
30 plan.
31 JEFF ZYONTZ: I understand the change. I amthief. This is the same language that was in
32 Wheaton.
33 ROYCE HANSON: Which has never been used.
34 JEFF ZYONTZ: Which has never been used, so.
35 NANCY FLOREEN: Or satisfy the standards. One of the--
36 JEFF ZYONTZ: Yeah, satisfy the standards would--
37 NANCY FLOREEN: Could be better?
38 JEFF ZYONTZ: Okay.
39 NANCY FLOREEN: Might I offer that editorial suggestion there, too.
40
41 MICHAEL KNAPP: Okay. So your modification is?



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1 NANCY FLOREEN: To replace "Meet the requirements." Replace that with "Satisfy the
2 standards." It achieves the same result. It just makes it clearer than you don't have to
3 submit the same pieces of it.

4 ROYCE HANSON: But we will--

5 JEFF ZYONTZ: You will need--in order to know that you satisfy the standards, you--

6 NANCY FLOREEN: You don't need a lot of information, yeah.

7 JEFF ZYONTZ: Exactly.

8 NANCY FLOREEN: Right. When no one is proposing that information will not be provided.

9
10 MICHAEL KNAPP: Okay. And I understand the chair's concerns. And I think it's going to
11 be important for us to track that and see what's the cost differential is.

12 ROYCE HANSON: Well, I think we will have to do, as Jeff suggested. We will have, you
13 know, for anybody who's doing this, we'll charge them more. There's no other way to get
14 the work done, because if you're going to meet the standards, you are going to meet the
15 standards.

16 MARC ELRICH: Will they pay that more sooner or later then anyway?

17 ROYCE HANSON: They pay it when they submit the application for subdivision.

18 MARC ELRICH: So, it's a sooner rather than later.

19 ROYCE HANSON: Well, they pay it now if they're going to submit the project plan.

20 MARC ELRICH: Okay.

21
22 MICHAEL KNAPP: Councilmember Berliner?

23 ROGER BERLINER: Council President, I just wanted clarification. Councilmember
24 Floreen had moved, as I understood it, adoption of all the amendments identified one
25 through seven on page two, and the language that was drafted by staff with respect to
26 that. So, I just want to confirm that that's in fact what we have done.

27
28 JEFF ZYONTZ: No.

29 ROGER BERLINER: I believe that was the import of Councilmember Floreen's motion
30 which I believe was just that. With that objection was adopted by this Council. So if that's
31 not correct, then I need to understand. That was my understanding was the motion. That
32 was the motion. The motion was to adopt all your language that you have proposed with
33 respect to items one through seven on page two.

34 JEFF ZYONTZ: No. [Inaudible] one through seven are everything that was in committee.
35 What I recommended was on the bottom of page 2 which is setbacks, retail parking,
36 project plan review standards, and those other things. I did not recommend changing
37 amenities outside of the area. I did not recommend changes to the grandfathering
38 provisions. There's a lot of things in there I didn't recommend.

39 ROGER BERLINER: Okay. That's important. I appreciate that clarification.

40
41 MICHAEL KNAPP: Of the elements one through seven, which were included in your
42 paragraph below?



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1 JEFF ZYONTZ: The setbacks standards number four. The committee essentially
2 recommended number five, with reduce the minimum, number six. And that's it.

3
4 MICHAEL KNAPP: Okay.

5 JEFF ZYONTZ: And the other one. The line 30 was really from a paragraph above where
6 the Planning Board recommended changing the "must follow on" rule in line 30. I also
7 recommended that. And, oh, and the use change was not on the piece of paper to include
8 the auto repair and the auto wreck.

9 ROGER BERLINER: Okay, Mr. Chairman, at the appropriate time that I would like to
10 move to some of the other items that are not on the staff's recommended list, because we
11 had had a conversation--just give me a minute.

12 ROYCE HANSON: I've got two other items that I want to.

13 MICHAEL KNAPP: Okay.

14 ROGER BERLINER: Did you want to finish those items?

15 ROYCE HANSON: [INAUDIBLE]

16
17 MICHAEL KNAPP: I'm sorry we're going to come back. And I will wrap up any other
18 additional questions or comments.

19 ROYCE HANSON: If you turn the lines beginning at 162, I think it is, 362.

20 MICHAEL KNAPP: 362?

21 ROYCE HANSON: Criteria three of--the third, fourth, and fifth criteria that are listed in
22 based on the list right--

23
24 MICHAEL KNAPP: 362 circle 24.

25 ROYCE HANSON: Circle 24. On criterion 3, the greatest building height is allowed over
26 the greatest density is allowed. This is a general rule as it is in these criteria. And we--the
27 Board doesn't think that's a very good rule. As I've pointed out on circle 65, it's problematic
28 as a standard for review of specific applications. And it could be desirable at times to allow
29 a higher building on a track where the allowed density for the whole track is lower than it is
30 on a small track nearby where the density allowed is greater because density and height
31 interact. So, I'd really like to, if you could, to delete that criterion. The other--one in two
32 pretty well take care of it because they deal with the general rules that your height
33 increases and decreases as it goes toward the center and then decreases as it goes
34 toward the periphery, which seems to us to be a good general rule.

35
36 MICHAEL KNAPP: Are there any objections to the chair's request? Good, all right.

37 ROYCE HANSON: And on criterion four, I think just a rewording of that will achieve its
38 intent better. And I've suggested come underlined language on circle 65 that would read
39 that building should be cited to minimize the impact of shadows on single-family
40 neighborhoods outside the TMX zone. And we emphasize the neighborhood because
41 there are situations where it wouldn't fall on the building but it could still fall on an open
42 space in the neighborhood or something like that that--



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1 UNIDENTIFIED: Street?

2 ROYCE HANSON: Street that we'd like to avoid.

3
4 MICHAEL KNAPP: Okay. That seems to be correct. Questions? Any? Without objection.

5 ROYCE HANSON: And the last on five where it reads that buildings may be taller to avoid
6 or minimize environmental impacts. It leaves this, beside the question of where we might
7 want them to be shorter. So I was going to suggest that--or the Board suggested that we
8 reword that, say "Building heights may be adjusted to avoid or minimize environmental
9 impacts."

10
11 MICHAEL KNAPP: Okay. I do not see any objection. Okay. Anything else, Mr. Chairman?

12 ROYCE HANSON: No, that's it.

13
14 MICHAEL KNAPP: Councilmember Berliner?

15 ROGER BERLINER: Thank you, Council President. Mr. Chairman, in that spirit of
16 compromise that you and I love with respect to such matters, I had withdrawn my
17 amendment on setting a cap of the price. But you and I had previously had a conversation
18 as to whether that 12.5% number was inviolate. And you had indicated some willingness
19 to consider a 10% number. I want to return to that now because this is what we're doing
20 now. And my hope is that you would, in fact, be amenable to reducing that 12.5% which
21 had no real magic about it to a 10%.

22 ROYCE HANSON: I think we--I really think we ought to stay at 12.5%. I'd rather see us
23 there. I think the difference is not enormous, but I think it's serious.

24 ROGER BERLINER: I will move it anyway and notwithstanding the chairman's objections.

25
26 MICHAEL KNAPP: There is a motion to modify the BLT from 12.5% to 10%. Is there a
27 second? Motion lacks for fail of a second. Okay. Number two, expand the grandfathering
28 provision. I'm trying--we have had a request.

29 JEFF ZYONTZ: Yes, the request was--is the grandfathering provision now says that you
30 can expand by 10% or 7,500 gross floor area--square feet of gross floor area, whichever
31 is less. What we had submitted in testimony was to allow up to 12.5% of all the buildings
32 on the site or 7,500 square feet, whichever was greater. And that that amount of
33 grandfathering could use as a standards of its previous zone. Just as a matter of zoning,
34 grandfathering is something that you think is a matter of policy you would want to avoid. If
35 you think that there is a public interest in going to the new zone, you would want to see as
36 little development under the current zone as you could do. So, I didn't specifically
37 recommend this, but this is a debatable point. You can go either way.

38
39 MICHAEL KNAPP: And so thus say your proposal was to go to 12.5%.

40 JEFF ZYONTZ: 12.5% of all buildings on the site, where 7,500 square feet. Whichever
41 was greater, and that change to whichever is greater is a huge difference, because again,
42 think of the Parklawn, which is 1.2 million square feet--I forgot. So 10% of the Parklawn
43 Building is 120,000 square feet right there. And you would be grandfathering an addition



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1 of that under its current standards. Of course, its nonconforming today so this gets real
2 complicated there. But again, you could see anybody who has a substantial amount of
3 development would be allowed a substantial amount of space. It's something you can
4 revisit it when you do fourtoo.

5 ROGER BERLINER: So if these were not in the TMX zone or if it--sorry, this were not in
6 TMX-2, if the property in question were not in TMX-2, our action here does not prejudice
7 revisiting that issue when we get to TMX-4?

8 JEFF ZYONTZ: I wouldn't see why it could.

9 ROGER BERLINER: It is only applicable to Twinbrook on its face. I remember, you know,
10 hearings about this. In White Flint, we are not making judgments with respect to that issue
11 here in the TMX-2.

12 JEFF ZYONTZ: Your rules apply by zone. So, however you establish the zone or make
13 the changes by the zone, it would apply to wherever you then applied the zone to the
14 ground.

15
16 MICHAEL KNAPP: Okay. Any further questions on ZTA 08-14? I do not see any. Well,
17 and that gets us to the end of the discussion on TMX on the TMX zones. So I would--
18 Councilmember Floreen?

19 NANCY FLOREEN: Well, I just want to say, there are things that had come up that we
20 discussed in Committee on this that I will bring later when we do the White Flint. And I just
21 want to make that point. Some of those were on the list over here that we had discussed.
22 Yeah.

23
24 MICHAEL KNAPP: Okay. Without further discussion, Madam Clerk, if you would call the
25 roll.

26
27 MARY ANN PARADISE: Mr. Elrich?

28 MARC ELRICH: Yes.

29
30 MARY ANN PARADISE: Mr. Praisner?

31 DONALD PRAISNER: Yes.

32
33 MARY ANN PARADISE: Ms. Trachtenberg?

34 DUCHY TRACHTENBERG: Yes.

35
36 MARY ANN PARADISE: Ms. Floreen?

37 NANCY FLOREEN: You bet you.

38
39 MARY ANN PARADISE: Mr. Leventhal

40 GEORGE LEVENTHAL: Yes.

41
42 MARY ANN PARADISE: Mr. Berliner?

43 ROGER BERLINER: Yes.



MARY ANN PARADISE: Mr. Andrews?

PHIL ANDREWS: Yes.

MARY ANN PARADISE: Mr. Knapp?

MICHAEL KNAPP: Yes. ZTA 08-14 passes eight to zero. Thank you very much. With that, I would have us adjourned until our public hearing at 1:30, which means when we come back this afternoon. Our afternoon schedule will include public hearings of that which there are one, two, three, four, five, five public hearings. I think there are nine speakers. We then go to district council session for oral arguments, which is the 20 minutes each side however we talk after that. Board of Health is generally scheduled for 3:30. Then we will come back to ZTA 08-06, transportation station development areas, and then work session on the Twinbrook Sector Plan, which we may be taking straw votes. Okay. Further questions? All right, so everybody back here at 1:30.

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TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President

Councilmember Phil Andrews, Vice President

Councilmember Roger Berliner

Councilmember Marc Elrich

Councilmember Valerie Ervin

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Don Praisner

Councilmember Duchy Trachtenberg



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1 MICHAEL KNAPP: Good afternoon, ladies and gentlemen. This is a public hearing on
2 Expedited Bill 33-08 Secondhand Personal Property Amendments clarifying that the
3 County Secondhand Personal Property Law applies to certain individuals making or
4 assisting in sales over the internet, modifies the reporting requirements for dealers in
5 secondhand property, prohibits transaction of secondhand property involving minors,
6 establishes guidelines for seizing certain secondhand personal property, and generally
7 amends the Secondhand Personal Property Law. Persons wishing to submit additional
8 material for the Council's consideration should do so before the close of business on
9 November 28, 2008. A Public Safety Committee WorkSession is tentatively scheduled for
10 December 4th, 2008 at 9:30 am. Please call 240-777-7900 for more information. We have
11 one speaker, Maureen Walter speaking on behalf of the County Executive. Come on up.
12

13 MAUREEN WALTER: [INDISTINCT]
14

15 MICHAEL KNAPP: You can--the choice is yours.
16

17 MAUREEN WALTER: I have to apologize, I might lose my voice so you might have to fill
18 in.
19

20 MICHAEL KNAPP: Okay.
21

22 MAUREEN WALTER: Albeit I'm not contagious.
23

24 MICHAEL KNAPP: All right, that's good. There's enough distance, I think we're okay.
25

26 MAUREEN WALTER: I made sure that I was not contagious.
27

28 MICHAEL KNAPP: We appreciate that.
29

30 MAUREEN WALTER: My name is Maureen Walter, and I'm an Investigator with the
31 Montgomery Police Pawn Unit for many, many years. I'm here to testify on behalf of the
32 Police Department in support of this Expedited Bill 33-08, which makes really important
33 changes to the Secondhand Law. These changes not only will benefit Law Enforcement
34 but the citizens, residents, and visitors for the county. As technology grows, we haven't
35 grown. We haven't had changes to the law in many years. So, what we want to do is we
36 want to bring the law up to current technology and to current loopholes that some of the
37 dealers have identified in handling the law. Some of those key changes that we're asking
38 for which you just read off, so I guess I can try...
39

40 MICHAEL KNAPP: We'll try to be helpful especially those...
41

42 MAUREEN WALTER: Keep up those. The internet facilitators, the holding period we want
43 to increase from 18 days to 30 days. Thirty days is for, a lot of police agencies in the



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1 region have a 30-day holding period and nobody is presented problems with, of course
2 the dealers were happy but it makes sense so that we can get your property back on more
3 of a chance. We want to eliminate the 10% exemption clause. That's put in there forever
4 and it's been a headache for everyone because some dealers think that it applies to them,
5 however, it only partially applies to them and it's a bear to try and enforce. I guess you all
6 know the economy is not anything to speak about. However, the pawn industry, the
7 secondhand industry is absolutely booming. We are busy within, we have ever been, we
8 have not only people that are going into pawnshops and pawning their property in order to
9 get to pay bills and in order to get food for their family. They are also shopping at the
10 secondhand stores because they can't afford to go out and buy a new television so they're
11 buying secondhand at the stores. The stores are just making a fortune. Though we have
12 business owners are having to pawn their personal property in order to make payroll and
13 in order to keep their businesses afloat until the economy turns around. We have these, I
14 saw them on eBay stores popping up all over the place. These stores--is my time up?

15
16 MICHAEL KNAPP: Take your time.

17
18 MAUREEN WALTER: I saw them on eBay stores. You can go into these places and you
19 can dump a whole cartload of property. They are not reporting. They said they're not
20 covered under the law. They actually go into, they do all of the selling so your name is
21 listed.

22
23 MICHAEL KNAPP: Do we have your testimony?

24
25 MAUREEN WALTER: Yes, you do.

26
27 MICHAEL KNAPP: Okay, and the Public Safety Commission is going to take this up on
28 December 4th.

29
30 MAUREEN WALTER: Yes.

31
32 MICHAEL KNAPP: Okay.

33
34 MAUREEN WALTER: Thank you.

35
36 MICHAEL KNAPP: Thank you very much. You made it all the way through. We appreciate
37 that.

38
39 MAUREEN WALTER: I did because you helped me. You went through half of it already.

40
41 MICHAEL KNAPP: There you go. There are no questions. This concludes this public
42 hearing. Good afternoon. This is a public hearing on Expedited Bill 34-08 Commission on
43 Veteran's Affairs Membership. It would increase the number of voting members on the



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1 Commissions of Veteran's Affairs and generally amend the law regarding the commission.
2 Persons wishing to submit additional material for the Council's consideration should do so
3 before the close of business today. A Health and Human Services Committee Work
4 Session is tentatively scheduled for November 20th, 2008 at 10:30 am. Please call 240-
5 777-7900 for information. We have two speakers. The first is Uma Ahluwalia, Director of
6 HHS, speaking on behalf of the County Executive and Commissioner Fred Nordhorn from
7 Prince George's County Veterans Commission. Welcome.

8
9 UMA AHLUWALIA: Thank you. Well, good afternoon Council President Knapp and other
10 members of the Council. My name is Uma Ahluwalia and I'm the Director of the
11 Department of Health and Human Services. I'm here to testify on behalf of the County
12 Executive in support of Bill 34-08, which expands the membership of recently established
13 Commission on Veterans' Affairs. First, let me thank you for the support, for supporting the
14 legislation which created the Commission on Veterans' Affairs. The County Executive
15 recently submitted to you the first round of appointments for the Commission and Council
16 Action and those appointments are scheduled for Council Action on November 25th. We
17 look forward to the confirmation of those appointees and the first meeting of the
18 Commission shortly thereafter. Bill 34-08 would expand the size the Commission from
19 eleven members to fifteen members, adding two additional slots for veterans and two
20 additional slots for members of the general public. One questions asked is why increase
21 the size of Commission, and simply put, the interest level in serving on this Commission
22 has been very high and the scope for the Commissions' work is very broad. And the
23 County Executive received twice the number of applications usually received for a similar
24 number of appointed positions. And he believes that the Commission would greatly benefit
25 from the expertise and experience of four additional appointees. While still operating
26 effectively and the expanded size of the Commission would still be relatively small when
27 compared to the sizes of some other local Commissions, the Commission on Aging, which
28 is...

29
30 MICHAEL KNAPP: Which may not be the best reason to justify it.

31
32 UMA AHLUWALIA: Well, but there is a precedent for larger Commissions. I guess that's
33 where we're going with that argument. After forwarding this bill to Council for introduction,
34 the County Executive received a request from Congressman Van Hollen requesting that
35 he be allowed to participate in the work of the Commission. And the County Executive is
36 grateful for the Congressman's interest in the Commission and recommends that Bill 34-
37 08 be amended to authorize the County Executive to appoint the representative of the
38 county's federal congressional delegation to serve as and non-voting member of the
39 Commission. Adding a representative for a federal delegation to the Commission would
40 enhance the Commission's ability to deal effectively with Federal issues. So, I'd like to
41 take a moment to note that the Mental Health Association's Information Referral Line for
42 members of the military and their families is now operational as of yesterday. And Jessica
43 McNarland is ready to take calls at 301-738-7176, Monday through Friday, from 9 am to



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1 noon, to help provide members of the military and their families access to a range of
2 existing services from mental healthcare housing employment and recreation. And
3 additionally, the Department of Health and Human Services recently mapped with MHA
4 and agreed to work together to ensure the effective operation of the INR phone line to
5 partner and to ensure that county service members, veterans and their families gain
6 access to the government's mental health initiative for veterans and to work to train the
7 local provider community on the mental health initiative for veterans and the unique needs
8 of service members including developing and understanding of military culture and the
9 challenges of treating patients with Post-Traumatic Stress Disorder and traumatic brain
10 injury. Thank you for the opportunity to testify today.

11
12 MICHAEL KNAPP: Thank you. I just have one question I received. Mr. Nordhorn? In
13 appointing the additional slots, was there a configuration that we're looking at?

14
15 UMA AHLUWALIA: Yes, it's my understanding that two are going to be veterans and two
16 are going to be public, from the general public.

17
18 MICHAEL KNAPP: In a way, you're looking at a cross kind of all of the various conflicts in
19 which we've had and people serve over the last many years with any particular focus and
20 more towards the recent past as opposed to further past or we're kind of just looking for a
21 representative from the past?

22
23 UMA AHLUWALIA: I believe it's the eleven members that were already sent to you. Their
24 organizational affiliations were clearly attached and they spanned more than just most
25 recent conflict, but I think we have more members from the recent conflict.

26
27 MICHAEL KNAPP: Okay.

28
29 UMA AHLUWALIA: Yes.

30
31 MICHAEL KNAPP: Taken from it. Okay.

32
33 UMA AHLUWALIA: All right. Are there any questions?

34
35 MICHAEL KNAPP: I see no further questions. Thank you very much.

36
37 UMA AHLUWALIA: Thank you very much.

38
39 MICHAEL KNAPP: Okay. Agenda Item 13, this is a Public Hearing on an Amendment to
40 County Government's FY09-14 Capital Improvements Program, Department of
41 Transportation - State Transportation Participation Project. Persons wishing to submit
42 additional material for the Council's consideration should do so before the close of
43 business on November 28th, 2008. Council action is tentatively scheduled for December



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1 2nd, 2008. We have eight speakers, or six speakers, I'm sorry. Mayor Peter Fosselman
2 from town of Kensington; Phil Perrine, Nickols Development; Robin Ficker representing
3 Robin Realty; Douglas Rosenfeld representing himself; Ilaya Hopkins, Coalition of Military
4 Medical Center Neighbors and Ann Ambler speaking as an individual. Mayor Fosselman
5 is our first speaker.

6
7 PETER FOSSELMAN: Thank you very much, President Knapp. Council Members, thank
8 you for sharing the time this afternoon. I'm here today on behalf of the town of Kensington
9 and its residents along with the blessing of the town of Chevy Chase View, with whom we
10 share out portions of Connecticut Avenue. We support the funding for a missing link of
11 sidewalk that is along Connecticut Avenue. And in your packages which I'm not sure if you
12 have in front of you, there is a detailed map of the location of the missing link of the
13 sidewalk. There's a letter from Council Members and Floreen and Ervin. Letter from
14 Councilmembers Floreen and Ervin to Secretary Piccory, letter from Bruce Johnston of
15 DPWT responding to residents' concerns and an additional letter from Councilmember
16 Ervin to the Chevy Chase Town View's town manager, Janet Coe. This gap of the
17 walkway is located at the intersection of Washington Street on the southwest corner down
18 to Saul Road along Connecticut Avenue. And if you recall, last year we had an
19 unfortunate episode where Karen Spritz-Grossman was killed by an automobile while
20 trying to cross Route 185. Along with several homes, there are three schools and three
21 places of worship in this area of Connecticut Avenue generating numbers of pedestrians
22 and traffic. The completion of the sidewalk would be a crucial part of the overall safety
23 measures being implemented for Connecticut Avenue. In May of 2007, the town of
24 Kensington held a Traffic and Safety Forum which some of you attended and we
25 appreciate your support in attending that event. At your request, the towns of Chevy
26 Chase View and Kensington held a joint worksession regarding the state road. And I met
27 subsequently with state officials and received their intentions to fund 50% of this new walk
28 if the county and two towns' subject would fund the remainder of the new walkway with the
29 help of Councilmembers Ervin and Floreen as well as County Council Executive. We met
30 with county officials last May to discuss the possibility of assistance and a fiscal study was
31 initiated and we're waiting for the final results which the staff is still reviewing at the state
32 level. So, I'm here today to respectfully request that you support the basic and necessary
33 improvements to the state road of Connecticut Avenue. Thank you.

34
35 MICHAEL KNAPP: Thank you. Mr. Perrine?

36
37 PHIL PERRINE: President Knapp, members of the Council. My name is Phil Perrine.
38 Thank you for this opportunity. I'm speaking on behalf of Nickols Development LLC and
39 also with me is Stewart Barr of Lerch Early & Brewer, he's representing Chevy Chase
40 Bank and speaking for them also. Nickols Development is a developer of the Ashton
41 Meeting Place Project at 108 and New Hampshire Avenue. Our original plan was
42 filledback in July of 2004. And at that time, the State Highway Administration had an
43 intersection improvement project on their books that they're trying to implement and both



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1 parties the state and the developer adjusted their plans accordingly and agreed to share
2 funding of that project. The Ashton Meeting Place, the first plan was disapproved by the
3 Planning Board, State Highway Administrator Peterson was concerned with that and
4 shifted money from that project. We worked with the community and we were able to gain
5 the Planning Board approval of a second plan a year later, on May of 2008, and we've
6 been working with the State Highway Administration to restore funding to the road
7 improvements when the economic conditions were such that it caused State Highway
8 Administration to drop funding on a number of projects. This road improvement project at
9 108 and New Hampshire, it is my understanding it was on a draft list, that's the final list
10 that's before you today, but have been dropped thinking it was a developer project. And
11 while the subdivision approval for Ashton Meeting Place and some other projects do
12 require the road improvement, this State Highway Project provides much more capacity
13 than is required by these projects and the full implementation of the improvements is too
14 much for the private sector alone to be able to carry. The State Highway plans provide for
15 some important pedestrian safety features such as pedestrian-actuated crosswalk signals
16 and extensive sidewalks and bikeway as well as extending and adding some turning
17 lanes. We understand just how difficult the current economic conditions have made
18 implementation of both public and private plans. Ashton Meeting Place is essentially on
19 hold until we can resolve the road funding project. We urge that the Council
20 consider returning this road improvement on 108 at New Hampshire Avenue to this list that
21 you have before you and consider sharing of cost for the improvements between the state
22 and the county and the private developer sector there. Thank you very much.

23
24 MICHAEL KNAPP: Thank you very much. Mr. Ficker?

25
26 ROBIN FICKER: Thank you. I'll show you a little chart here just very quickly. I'm Robin
27 Ficker, a broker with Robin Realty.

28
29 MICHAEL KNAPP: Mr. Ficker, turn on your microphone please.

30
31 ROBIN FICKER: Robin Ficker, a broker with Robin Realty. Mr. Chairman, members of the
32 Council, Fiscal watchdog Donald Praisner, nice to be with you. Here, we have the county
33 wanting to fund state projects. We have eight state senators. These senators provided the
34 margin of victory for the governor for his tax increase proposal at the recent special
35 session. The crucial vote was 24 to 23 with seven state senators from Montgomery
36 County voting in favor of this big tax increase, which included a state income tax increase,
37 a sales tax increase, a car tax increase, and a corporate tax increase. Two of the three
38 members of the State Board of Public Works are from Montgomery County, Mister--the
39 comptroller and the State Treasurer. And the third member of the Board of Public Works
40 could not get reelected without winning the majority of the votes in Montgomery County as
41 a practical matter. Why aren't we getting our fair share of state money for state projects?
42 Our state senators are not doing their job. There is no reason why we should have to
43 borrow against the county liquor revenue screen and include local impact taxes to pay for



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1 state projects. Our county is running a large deficit, borrowing to pay for these projects
2 reminds me of someone who is very much in debt getting a new credit card from the many
3 credit card solicitations we all get every week, and then using this new credit card while
4 they are in debt to buy something that they couldn't afford otherwise instead of using our
5 county revenue from, instead of borrowing against our liquor revenue screen, instead of
6 using impact taxes from the County to pay for these state projects, we should instead get
7 our fair share from the state. And this public hearing should include our state senators, it
8 should include the comptroller, and it should include the treasurer so that Montgomery
9 County can finally get its fair share instead of getting shorted as we have been for the past
10 several decades.

11
12 MICHAEL KNAPP: Okay. Mr. Rosenfeld.

13
14 DOUGLAS ROSENFELD: Thank you. My name is Douglas Rosenfeld. I'm a resident of
15 Potomac in Maryland, District of Columbia, licensed attorney. I produced the detailed
16 accounting of the funding of the State Transportation Participation Project since its
17 inception in April 2006; the National Rating Agencies that evaluate the county's debt have
18 it. The Maryland State Prosecutor, Mr. Andrews, finally has it. I'm here today to share its
19 contents with the citizens of the county. Mrs. Floreen, you are one of two Council co-
20 sponsors of this project. As Chair of the Council's Transportation Committee, you've
21 overseen every funding proposal relating to it over the past several years. The plan you
22 presented in 2006 was to accelerate \$80 Million in State Transportation Projects with
23 county issued liquor revenue bonds. The state then would repay the County the full \$80
24 Million when its budget allowed. The chief selling point of the project was a promise that
25 the fiscal burden would not fall on the shoulders of the county's taxpayers. The proposal
26 that's before the Council today breaks that promise in a big way. Without saying so, this
27 Council has recently positioned itself to issue taxpayers supported bonds in an amount of
28 at least \$36.8 Million to underwrite this project. Why? First, because the county cannot
29 now and never could fund the project with liquor revenue bonds. State law only allows
30 liquor fund proceeds to pay debt service on projects that relate to the operation of the
31 county's alcohol distribution system and revenue bonds can't be used to finance
32 transportation projects. It won't produce revenues to pay back the bonds. The county all
33 along envisioned a bait and switch scheme. To avoid the county statutory debt ceiling, the
34 Council budgeted \$80 million in liquor revenue bonds knowing they could never be issued.
35 Then the county planned to substitute variable rate demand notes for the liquor revenue
36 bonds to apply some accounting magic through a newly adopted general fund loan policy
37 and to make debt service payments through the liquor fund. As long as the state was able
38 and willing to pay the county back quickly, nobody would be the wiser. The problem is the
39 state can't or won't play along anymore by agreeing to repay the county. And Mrs. Floreen
40 couldn't convince her constituents to bail the Council out by approving a parking excise
41 tax. You could admit your misdeeds and just abandon the project. But then, how could
42 you explain to our delegation on Capitol Hill that \$5 Million in illegal revenue bonds have
43 been pledged to demonstrate this county's commitment to the Purple Line just as efforts



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1 are underway to secure federal funding for that project, better to dump the mess on the
2 backs of the county's taxpayers. So, on October 23rd Mrs. Floreen, your Transportation
3 Committee endorsed the current proposal. Your committee's Press Release continues the
4 Council's practice of acting as though the liquor revenue bonds are a viable funding
5 source. But even as that press release was being distributed, this Council already was
6 moving to replace the liquor revenue bonds with the currency of last resort, tax-supported
7 debt. On October 28th, the Council passed the funding bill authorizing the issuance of
8 \$327.5 million in general obligation debt including 36.8 million for transportation. In the
9 coming months, as you pressure school employees to renegotiate their contracts and as
10 you discuss plans to furlough county employees, please be sure to first tell them that one
11 reason they must sacrifice is because you have diverted tens of millions of county dollars
12 to protect yourselves by protecting the public debt financing fraud that I have outlined here
13 today. Thank you.

14
15 MICHAEL KNAPP: Thank you. Ms. Hopkins?

16
17 ILAYA HOPKINS: Good afternoon. My name is Ilaya Rome Hopkins and I'm here with
18 Coalition of Military Medical Center Neighbors. Together with me today are Debbie
19 Michaels of the Glenbrook Village Homeowners Association and George Milne of Stone
20 Ridge School, who are both members of the coalition. Thank you for the opportunity to
21 address you this afternoon regarding the County Transportation Projects for State
22 Participation. The coalition of which I am the chair represents over 8,000 residents who
23 live and work, attend school and do business in around Bethesda. Our goal is to make the
24 BRAC-mandated expansion at the new Walter Reed work to see the mission's succeed
25 while preserving the quality of life and the economic vitality of the surrounding area. We
26 know there are series budgetary strains at the county and state level. The other certainty
27 is the start date of the new Walter Reed, September 2011. By law, at that time, the new
28 Walter Reed will open its doors to thousands of new employees and a doubling of the
29 patients and visitors load to close to one million people a year. The County Council has
30 elevated BRAC-related projects to a regional significance as evidenced in a July 16th
31 letter from Mr. Leggett and Knapp. However, paradoxically, that has taken BRAC out of
32 the local limelight. We need Montgomery County and the County Council, the host of the
33 crown jewel of US Military Medicine, to focus on the urgency of this matter and use all
34 resources possible to find the solutions to the infrastructure bottlenecks that will hamper
35 the ability of the base to fulfill its mission. What can the County Council do? Nothing
36 speaks more loudly than committing county resources to the solution. A key to solving the
37 transportation problem is reducing the number of single occupancy vehicles on the arterial
38 roadways surrounding the base. We need accessible and reliable public transportation to
39 encourage more employees to access their workplace by bus and Metro. One proposal on
40 the table is a new entrance to the Medical Center Metro Station on the eastside, the Navy
41 side of Wisconsin Avenue. There are a number of benefits to this: better access to the
42 base for employees and visitors, safer pedestrian passage across Rockville Pike, and
43 improved traffic flow due to the elimination of an at-grade walkway. The County Council



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1 has already shown support for the importance of better access to Metro stations by
2 funding the Elm Street high-speed elevator bank to the Bethesda Metro Stop. We need
3 that type of commitment from the County Council at the Medical Center Station as well.
4 This project is currently up for defense access road certification. It is quite unprecedented
5 as DAR was designed to serve rural not urban areas. Most importantly, DAR is a cost
6 sharing program. While local officials put resources into the project, the military will be
7 hard-pressed to walk away from an improvement that will also benefit its facility.
8 Ultimately, the citizens surrounding the base need our elected officials at all levels,
9 county, state and federal, to pull the levers of resources through processes like the CTP to
10 make the case in the strongest way possible that BRAC is coming and we must be
11 prepared. Therefore, we believe that stronger language backed by a commitment of
12 resources to infrastructure improvement is a critical part of any amendment to the CTP
13 moving forward. The members of the coalition and residents throughout the area look
14 forward to Montgomery County being the shining example of how thoughtful planning and
15 judicious uses of limited funding can produce real results that benefit local communities and
16 to find institutions that we are honored to host.

17
18 MICHAEL KNAPP: Thank you very much. Ms. Ambler?

19
20 ANN AMBLER: Good afternoon. Ann Ambler, Wheaton. Southern California's burning up,
21 the Arctic will soon be ice-free in summer, the glacial sources of the major rivers of China
22 and India will be gone by 2030, and Maryland island real estate is shrinking fast. But here
23 in Montgomery County, it's very nearly business as usual. We fund new highways like the
24 Montrose Parkway and the ICC, grade separations and wider intersections to encourage
25 more driving and less walking, thereby putting our pledge to greenhouse gas emission
26 reduction goals yet further out of reach. Yet you are all very well-meaning and you all
27 understand that reducing vehicle miles travel is a key component of reducing that third of
28 our emission resulting from transportation. You also know that COG projects increasing
29 vehicle CO2 emissions through 2030 even assuming Maryland clean car standards and
30 nationally-imposed cafe standards. And you have the Planning Department's draft
31 environmental indicators report given to you October 1st, also showing trends in the
32 wrong direction. Do not expect these trends to turn around by themselves. The climate
33 crisis calls for a massive overhaul of our transportation priorities not a little tweak. The
34 T&E Committee proposal to use State Transportation Participation Projects funds has
35 some good elements like sidewalks, pedestrian underpass and preliminary engineering for
36 the BVeirs Mill MLBRT and the Georgia Avenue bus way. But while this plan shows a
37 million dollars in FY10 for widening intersections on Muddy Branch Road and Maryland
38 Routes 27, 28, 108, 115, and 355, and for lengthening left turn lanes on seven other
39 roads, that Georgia Avenue bus way must wait until FY11 to tap its first 500K. And
40 Connecticut Avenue must wait until Fiscal 12 for its sidewalk. Projects to speed private
41 cars along and discourage pedestrian activity are given priority in this plan. Georgia
42 Avenue wide, ugly, and naked presents some marvelous opportunity for showcase
43 redevelopment with rapid transit, bike lanes, trees, and sidewalks. Why not put these



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1 dollars there? If intersections are widened at all, it should be to accommodate express
2 transit service or exclusive bike lanes, not cars. And safe pedestrian crossings must be
3 provided. Studying a county-wide bus rapid transit system was deemed inappropriate for
4 this funding mechanism. However, it still imperative that we fund such studies as well as
5 studies for county wide contiguous bike and pedestrian routes as alternatives to cars.
6 Chicago, for example, is putting all residents within one half mile of a bike path connected
7 to work in leisure destinations by 2015. We have an opportunity to address both climate
8 change and the number one health problem in the US, obesity, with the same bold stroke.
9 The Purple Light Rail cross-county line and bike trail long overdue is but one piece of the
10 comprehensive alternative transportation network we need to make us healthy and
11 sustainable in the 21st century. Someone rightly said only big ideas have the ability to
12 inspire, its time to be inspirational. Thank you.

13
14 MICHAEL KNAPP: Thank you very much. We have a couple numbers of questions.
15 Councilmember Berliner?

16
17 ROGER BERLINER: Ms. Hopkins, it's a pleasure to have you with us. I must say that I
18 think you are one of the finest representatives of our neighborhoods. You are a very
19 constructive voice and always worked in a collegial manner and I really have great respect
20 for you. I want you know that when this matter came before the T&E Committee that I
21 opposed very similar questions with respect to what are we doing about BRAC and we
22 have Direct Holmes there and we had, obviously, our own staff there and I was insistent
23 as you are that we make sure that this not play out the way it seems to on the surface in
24 light of the state's budget and financial situation and their cutting back of funds. So, I
25 would like, for just a moment, for Dr. Orlin to respond to your concerns since I had raised
26 them and he assured me, I promise you, he assured me that BRAC would be taken care
27 of and I'd like him to explain why it isn't reflected in this document.

28
29 GLENN ORLIN: Sure. You recall on the last CT, the Consolidated Transportation
30 Program, the state's 6-year capital program, the state allocated about \$45 million to each
31 of three BRAC Projects in Maryland, the Aberdeen, Fort Meade and Bethesda. It's a little
32 suspicious when you see the same number for all three and the reason why it was the
33 same number for all three is because the state really didn't really know what the cause
34 would be for the improvements that are placed since we set aside \$45 million in the three
35 areas just to see, you know, just to make sure there was some money available for this.
36 The State in Bethesda, as you know, has identified four intersection improvements they
37 want to go forward with, Rockville Pike and Cedar Lane, Rockville Pike and Jones Bridge
38 Road, Jones Bridge Road and Connecticut Avenue and Cedarr Lane and Old Georgetown
39 Road. And they assured us that the \$30 Million that's left in the project is enough to pay
40 for the design of those four intersections. Maybe some of the money left over for
41 construction, but it's not going to mean we have to construct them. At the road show the
42 other night, the annual tour meeting, the Secretary said that they would find the resources
43 eventually to go forward with the improvements. The reason why you don't see the dollars



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1 in this program is because in putting it together, the Executive Staff, Park & Planning Staff
2 and myself, we're looking for projects that actually had pre-solid cost estimates, and
3 frankly, the BRAC ones don't have it. Once they're designed, it will, and at that point, if for
4 some reason, the state is not able to fulfill its promise to go forward, then it could be
5 considered again coming back to this program to see if we could participate in that. And if
6 you look at the details, you'll see, it's about \$22 million, still it's not yet allocated. But,
7 that's basically the answer.

8
9 ILAYA HOPKINS: I understand all that but I think the most important statement in this
10 testimony is that the one certainty we know, September 2011, a million people a year will
11 be accessing the base. And the process being a six-year capital improvement project,
12 there needs to be some recognition of what Montgomery County is going to contribute to
13 the solution of these problems. I understand that the state has a line item on intersection
14 improvements but all of the jurisdictions, county, state, and the federal government need
15 to work together. And when you have public documents like this and the opportunity to
16 have a public hearing, I believe and the coalition believes that it's important to have BRAC
17 as a place holder so that when we're already to act, it's there, and we don't have to go
18 back to square one to begin the process.

19
20 MICHAEL KNAPP: Okay. Well, good dialogue and we will, when the Council takes this up,
21 make sure that that gets addressed as well or at least gets raised. I will get to address
22 those, see what the Council gets. Thank you.

23
24 ROGER BERLINER: It will be raised.

25
26 MICHAEL KNAPP: It will be raised. Okay, thank you very much. Councilmember
27 Leventhal?

28
29 GEORGE LEVENTHAL: I also strongly support adding an east entrance to the Medical
30 Center Metro Station and I won't forget about it. I mean we--I guess you can consider this
31 a mini-stimulus package and we were trying to get dollars into projects that could be spent
32 rapidly in difficult economic times and to send the signal that we were going to make a
33 local commitment to projects that otherwise didn't really have much hope of moving along.
34 In the case of BRAC, you've heard what Glenn Orlin said in addition. I'm not--I had a
35 concern that if we sort of give up on federal funding too early, it's less likely that we get
36 federal funding. But along with Mr. Berliner and I know Ms. Floreen as well, I'm strongly
37 committed to supporting an east entrance at Medical Center Metro. My hope is that the
38 bulk of that will be done with federal money and we're not done seeking federal money for
39 that. But it's certainly is a priority and I support it. Ann Ambler, I agreed with a lot of your
40 testimony. What was the basis for your assertion that a statewide bus study was not
41 deemed appropriate? Where did that come from? Why did you think that was a case?

42
43 ANN AMBLER: Well, this funding mechanism...



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1
2 MICHAEL KNAPP: Ann, I'm sorry. Press your microphone.

3
4 GEORGE LEVENTHAL: But what was the basis for that?

5
6 ANN AMBLER: I'm sorry. The basis was Glenn's memo.

7
8 GLENN ORLIN: It's actually the countywide bus way study, not the statewide.

9
10 ANN AMBLER: Yeah, I said countywide.

11
12 GLENN ORLIN: Yeah, she just said countywide. If it's a feasibility study looking at where
13 bus routes might go or bus rapid transit might go, that's something that is not going to lead
14 immediately to a project. That means the current revenue funded. It's a planning study.
15 And none of the funds in the state transportation projects is current revenue.

16
17 GEORGE LEVENTHAL: Yeah.

18
19 GLENN ORLIN: So, really, the proper place to fund that would be maybe out of the facility
20 planning transportation or out of even an operating budget current revenue study. There
21 needs to be a supplemental appropriation by the county to go forward to this in one place
22 or another, but it wouldn't be part of this.

23
24 GEORGE LEVENTHAL: Well, as I said earlier, I mean, the intent here was to move
25 money into projects that would show demonstrable results in the nearest possible
26 timeframe where we were as far along as could be reasonably expected. And so, I
27 requested that the items that you express in support for the Georgia Avenue bus way, the
28 Veirs Mill bus way, the Forest Glen Metro entrance be included in the package and I was
29 happy to support those. We try to find projects that we could expedite and move along as
30 quickly as possible because we understood what they cost and we could get the money
31 out the door and move us to a real visible transportation improvement as quickly as
32 possible. I just want to make that case. So they were not, you know, long-range sort of big
33 thinking studies funded in this package, but it doesn't preclude us from looking at long-
34 range, big-picture transportation elements in the near term.

35
36 ANN AMBLER: Right, but each time you widen an intersection...

37
38 GEORGE LEVENTHAL: I heard your testimony, I know.

39
40 ANN AMBLER: It will be more difficult...



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1 GEORGE LEVENTHAL: Right, I heard your testimony, but I--in terms of bus rapid transit,
2 we're doing more in this package for bus rapid transit than has ever been done in
3 Montgomery County before as a result of Committee's work.

4
5 MICHAEL KNAPP: All right. And this concludes this public hearing. Thank you all very
6 much. Agenda item 14 is a public hearing on the supplemental appropriation to the
7 County Government's FY09 Operating Budget for Department of Health and Human
8 Services, \$300,000 for Adult Drug Court Capacity Expansion Initiative Grant. Action is
9 scheduled immediately following this hearing. There is no--there are no speakers. I would
10 turn to the chair of the Public Safety Committee for any comments that he may have.

11
12 PHIL ANDREWS: Thank you, Council President Knapp. The Council was the beneficiary
13 of a briefing on this program recently and the--we heard from Judge Roe about how this
14 program is working extremely well and saving county dollars by helping people who
15 otherwise be in jail, turn their lives around and overcome their addiction. This is a
16 \$300,000 federal grant that were being asked to accept today for this purpose. The Adult
17 Drug Court Capacity Expansion Grant is a terrific program. I've had the chance to follow it
18 very closely and I'm glad the Council had a chance to hear directly from Judge Roe about
19 how it works. And I would make a motion that we approve this grant Councilmember,
20 Council Chair Leventhal and I agreed that because all the members of the Committees
21 had the opportunity to have the briefing, that it did not need to go to the Committee, so it
22 came directly before the councils.

23
24 MICHAEL KNAPP: Okay. We have a motion from...

25
26 PHIL ANDREWS: And I have a second.

27
28 MICHAEL KNAPP: The motion has been seconded. Chairman Leventhal, any additional
29 comment? Okay. We have before us a motion for supplemental appropriation to the
30 County Government's FY09 Operating Budget for \$300,000 which is a federal grant. Is
31 there a discussion on the motion? Seeing none, all in support indicate by raising your
32 hand. That is unanimous among all of those present. Thank you very much.

33
34 GEORGE LEVENTHAL: Let me just add. We heard from our good folks at HHS as well,
35 they're here. Thank you for the good work.

36
37 MICHAEL KNAPP: Okay. And our final public hearing for the morning, this was originally
38 scheduled for public hearing and action but it's just a public hearing today. This is a public
39 hearing on a Special Appropriation to the County Government's FY09 Operating Budget
40 from Montgomery County Fire and Rescue Service, \$1,595,000 for Electronic Patient
41 Care Reporting. Persons wishing to submit additional material for the Council's
42 consideration should do so before the close of business today. The Public Safety
43 Committee Work Session is tentatively scheduled for November 20th, 2008 at 9:00 AM.



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1 Please call 240-777-7900 for additional information. There are no speakers. This
2 concludes our public hearings. The Council will take just a very short recess for about five
3 minutes and then we'll come back and begin with oral arguments, so I just want to make
4 that everyone has got time to get ready and be prepared. We will come back for oral
5 argument and it would--each had, each side has 20 minutes, so we'll be back at 2:25 to
6 begin oral argument. Thank you very much.

7
8 MICHAEL KNAPP: Okay, good afternoon. Welcome back. We are--the Council is now
9 moving in to District--continuing District Council Session, moving into oral argument in
10 consideration of hearing examiner's report and recommendation for application number G-
11 861. The Council -- request--the Council has limited oral argument to the three issues
12 conformly to the master plan compatibility of the proposed development and the purpose
13 of the plan for development zone. The opponents and the applicants will each have 20
14 minutes. The opponents have requested oral argument. They will go first and have
15 elected to reserve three minutes for rebuttal. Mr. Rivkin's testimony will be read by Mr.
16 Klauber. Mr. Humphrey will then speak then Mr. Klauber will go last on his own, as his
17 own speaker. The opponents will have 17 minutes total for their argument. They have
18 elected not to subdivide their time. So, we'll see how that works. So, the clerk has the
19 timer set. Ms. Carrier is kind of the referee, just to make sure that everything is under
20 control.

21
22 FRANCOISE CARRIER: I'm here to type up if anyone strays outside the record.

23
24 MICHAEL KNAPP: Right. Okay. Okay. Mr. Klauber.

25
26 MARTY KLAUBER: Mr. Rivkin says setting. The adopted plan for the Bethesda CBD has
27 two mentions of the Keating site. One of it, at the Arlington Road District is at page 134.
28 This is for alternative uses, "The plan recommends re-zoning the Post Office from a base
29 zone of C-4 limited to standard method of .2 FAR. If US Postal Service does not need the
30 site for continued postal use, the site could be redeveloped with a neighborhood serving
31 commercial use up to .25 FAR. Alternatively, the site could be redeveloped for multi-family
32 housing with neighborhood serving retail along Arlington Road." The citation does not say
33 postal use with residential is acceptable. The second mentioned of the Keating site is
34 forceful on no postal use with residential. That is page 221 and section directly dealing in
35 Post Office uses. "Given the high land values and the difficulty of finding the site in
36 Bethesda, the Postal Service considers the site attractive of the possibility it provides for
37 expansion and extensive parking. Residential use would not be compatible with continued
38 function as a carrier annex on any portion of the site because of the hours of operation."
39 The proposal is against the adopted plan and should be rejected by the government.
40 Moreover, the point was made in the hearing that the vibrations of 65 trucks coming in and
41 out during the course of a day will adversely affect the apartment residents. The applicant
42 came up with eight sites which have examples of truck movements in a concrete garage
43 with apartments above a garage which presume to prove that there was not nuisance in



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1 the apartments. I had inspected the eight sites and had sent a letter on August 25th which
2 was in the record with my results of the inspection. The hearing examiner totally ignored
3 my letter, my investigation. I summarized the investigation for the Council. No postal
4 facility was in the examples. There are hundreds of carrier annexes across the country.
5 The Keating Company has resources to investigate the carrier annex and pick one case
6 that is underground garages and apartments on top. The successful Post Office in
7 Northern Virginia has two buildings and the residential apartments are in the building
8 themselves separate from the carrier annex in that garage. There is no carrier or annex
9 with apartments with the garage in the same building across the country. The applicant
10 should tell the county that and that there is no example of the mixed use they are
11 proposing. Two, all the examples have access from at least two intersecting streets to the
12 building complex, thus they have separated annex access to the complex. That is in sharp
13 contrast to the Keating site of Bethesda where the sole access is from Arlington Road.
14 And the residential and Post Office traffic has sole access from Arlington Road. Of the
15 examples, seven are much larger than the Keating site affording developers flexibility with
16 entrances and parking. Only the "upstairs at Bethesda Road" site on Arlington Road, on
17 Elm and Bethesda Avenue is comparable in size. But this site is bordered by three streets
18 and the development is a mega structure with the ground story retail and restaurants. The
19 applicant does not show the below grade activity is similar to the trucks of a daily poster
20 carrier annex functions proposed for the Keating site. Summary: I conclude the
21 development proposed is contrary to the adopted master plan and is not compatible with
22 existing and future development in the Arlington Road District. I will quote the first
23 objective for the district contained on page 134 of the plan. "Preserve and enhance the
24 Arlington Road district as a community retail and service business area." Malcolm D.
25 Rivkin, AICP.

26
27 JIM HUMPHREY: Thank you. For the record, Jim Humphrey, Chairman of the Planning
28 and Land Use Committee for the civic federation. I would like to first address the issues
29 regarding conformance with the master plan. As Mr. Rivkin noted, there is language in the
30 master plan which states it's the Post Office remains on any portion of the site than
31 residential is not a compatible use. There's no language that states retail is not compatible
32 or an office space would not be compatible with the carrier annex. So the concern of the
33 community is that with the predictability of the implementation of the sector plan, and that
34 the only mix of use which is advised is not compatible and the sector plan is the very one
35 the applicant is proposing. Now that stated, do we understand that when the Council saw
36 this project in--last in January in its previous version, you stated or found in your resolution
37 the opinion for the remand order Resolution 16-431, that the Postal Service even with the-
38 - Post Office with the addition of the carrier annex was the equivalent of retail use. So, I'll
39 move next to the master plan issue of height. When the plan talked about that mix of uses
40 on this site, it talked about retail along Arlington Road with the building height of no more
41 than four stories, and the residential to the rear with the building height of no more than
42 three stories. The Council, in your January opinion, noted the applicant has proposed a
43 building that will cover virtually the entire site with very little ground level set back and



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1 building height reaching the equivalent of five to six stories. Now the applicant has
2 reduced the height of the building, 3 feet 7 1/5 inches. That's the difference between the
3 height binding element and the previous development plan which you saw at 94A, which
4 is here for your perusal, if you wish, and the current development plan 122E, which is
5 before you, 7 feet--3 feet 7 1/5 inches. As the hearing examiner noted on page 44, the
6 report, the building is still the equivalent of six stories along the Arlington Road and four
7 and a half stories to the back so it's still not in conformance with the sector plan regarding
8 height. The other major difference or change in the project, this is the residential stories,
9 the second through fifth floors have been pulled back an additional 30 feet from the rear
10 property line resulting in reduction of units from 111 to 105 units. However, the Council, in
11 a January opinion, had no problem with the residential density of the project. Your
12 concern in January was with the commercial density and I'm quoting again from that
13 opinion. "It appears that the Postal Services ceiling requirement and extensive parking
14 need results in a building that is significantly larger that would normally result from the
15 recommended commercial density resulting in a non-residential density more intense in
16 the sector plan intended." So, we assert that the density of the project is still not in
17 conformance with the sector plan. The other issue which you ask the hearing examiner to
18 take a look at was that of setback, in particular, the plan development zone, compatibility
19 requirement that a PD building be no closer than hundred feet to the nearest one family
20 residential use. The hearing examiner did find, however, that the waiver of that
21 requirement did apply at the site because of it's proximity with central business district.
22 However, there is language in the sector plan regarding setback on page, that's reprinted
23 on page 27 of the hearing examiner's report that notes, "Maintain 100-foot building
24 setback from residential properties." So, this project does not conform with the setback
25 recommendations, or the sector plans either. Now, that two foot setback from the rear
26 property line was an important issue in the Council's opinion filed in January. You noted,
27 "As technical staff suggested a compatible relationship could be better established with
28 the greater setback which would allow larger trees to be planted along the trail property
29 line for screening purposes. On continuing, pulling the underground garage back from the
30 property line could also reduce the potential for damage to the trees already existing in the
31 trail right of way. And the Council also noted, "With a design that provides more ground
32 level open space, greater ground level setbacks and a lower building high along trail, the
33 combined postal facility, multi-family building could be a positive step in implementing the
34 sector plan's vision for the Arlington Road District." Only one of those three issues has
35 been addressed by the developer. On remand, there is no greater ground level open
36 space provided in the plan which you can see if you examined Exhibit 116, the first
37 footprint of the first story of the building remains the same as when you saw the project in
38 January. There is no greater ground level setback; the rear wall of the first story is still two
39 feet from the rear property line. If I could turn a moment to compatibility, the hearing
40 examiner focused primarily on, from the perspective of the Crescent trail and the
41 neighboring residential properties, but I'd like to focus to Council, if I could, on
42 compatibility with existing and allowed future development along this block of Arlington
43 Road. Next to the property, to the north is a one-story tire store. Next to that, a one-story



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1 retail building with a couple of shops in it, and on the corner of Bethesda Avenue a one-
2 story restaurant. Adjacent to the property on the south is a one-story restaurant. Next to
3 that, a five-story office building and on the corner of Bradley, a three-story retail office
4 building with the CVS in it, all C-2 properties. Across the street is the one-story Bradley
5 Shopping Center, which is in an overlay zone of 0.5 FAR, likely not to be redeveloped with
6 any higher height than one-story as long as the overlay zone remains, which retains this
7 shopping opportunities so valued by the community. And on that corner, that side of
8 Arlington, the corner of Bethesda is the one-story Euro motor cars, which was recently
9 remodeled several years ago. There's a C-2 property zone, this block might be
10 redeveloped up to the maximum allowed in the C-2 zone, the three-stories. But this
11 project at equivalent of six-stories along Arlington Road is not compatible with the existing
12 development which is primarily one-story or the proposed to allow the three-story C-2
13 zone development. The language of the plan development zone states that it is intended
14 and permitted--intended that the zoning category be utilized to implement the general
15 plan, the area master plans and other pertinent county policies in a manner and to a
16 degree more closely compatible with said county plans and policies than maybe possible
17 under other zoning categories, other zoning categories which would specify what uses
18 were permitted or not permitted, which would specify a height, a density and a setback
19 requirement. The Council itself, in its opinion in January noted that the sector plan plays a
20 central purpose in the plan development zone. And so, in this context, its
21 recommendations and objectives are entitled to particular deference. And yet, we have a
22 project which doesn't conform to the use, the height, the setback or the density
23 recommendations in the sector plan. While we believe that there might be a mix of uses in
24 our building form which would be a positive contribution at this block of the Arlington Road
25 District in Bethesda, we assert that this project is incompatible and in substantial
26 nonconformance with the sector plan as was the version of the project that the Council
27 ordered remanded for change in January. We therefore respectfully request that the
28 council deny this resounding request. Thank you.

29
30 MARTY KLAUBER: Sector Plan issues, page 29 of the Sector Plans Urban Development
31 guidelines specifically states, "Expand pedestrian connections between parcels to
32 promote walking and reduce the number of vehicular trips. H) Provide pedestrian and
33 bicycle access of the Capital Crescent Trail on the east. The proposal to provide only
34 residence of 105 apartments access to the trail does not meet the clear meaning of either
35 the guideline and does not satisfy the purpose clause of the PD zone. The hearing
36 examiner should have but did not analyze how public access to the trail would reduce
37 vehicular shopping trips by providing walkability for the existing and future residents of the
38 area. The logic of "walkability" using the proposed mid-block traffic light in Arlington Road
39 and full access to the trail was summarily dismissed and never satisfactorily explored.
40 Page 35, the hearing examiner relied on Mr. Lanphere's testimony on changes since the
41 adoption of the sector plan resulting in his recommendations being treated only as a
42 guideline, but did not consider what changes have developed for the Crescent Trail since
43 the adoption of the sector plan or how its accessibility represents a future resource for



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1 Bethesda, or substem the factor in whether the purpose clause was satisfied. Page 37,
2 the hearing examiner did not analyze but only paraphrased the shortsighted technical staff
3 conclusion that the proposed private access to the trail would can be compatible with the
4 sector plans recommendations and did not consider that it would function as an important
5 part of a comprehensive pedestrian circulation system. One-way access to trail for 105
6 apartment dwellers is not comprehensive. Given the re-zoning of Lot 31, the one way trail
7 access ignores the public needs. Page 44, the hearing examiner's conclusion about
8 private access to the trail is contrary to the rules of statutory interpretation. If the council's
9 intent was to restrict access, that type of limitation would have been specifically indicated,
10 it was not. Access is addressed in a general non-restrictive manner. We would like to offer
11 an alternative view in analysis of why private access to the Crescent trail does not satisfy
12 the clear, specific provisions to the purpose clause. The plain language of the purpose
13 clause provisions speaks for itself. Pages 93 and 94 of the hearing examiner's report,
14 failure to provide for public access to a site from Arlington Road to the trail does not
15 satisfy four specific provisions of the PT zone purpose clause. One, "It discourages a
16 maximum of social and community interactive--interaction and activity among those who
17 live and work within an area." Two, does not "function for the general benefit of the
18 community and public at large as places for relaxation, recreation and social activity."
19 Three, does not "encourage and provide for the development of a comprehensive
20 pedestrian circulation networks separated from vehicular road ways which constitute a
21 system of linkages among residential areas, open spaces, recreational areas, commercial
22 and employment areas, and public facilities." And four, does not "achieve a maximum of
23 safety, convenience, and amenity for both the residents of each development and the
24 residence of neighboring areas." Page 102, the objective of encouragement of pedestrian
25 activity has been narrowly treated by the hearing examiner by limiting such activity to the
26 frontage of Arlington Road. This narrow interpretation does not take into consideration
27 how the public would gain access to an incredible public resource if they were accessed
28 from Arlington Road to the trail. The hearing examiner unfortunately does not explain how
29 she arrived at her conclusion about how public access to the trail relates to "a maximum of
30 safety" for the residents of the 105 apartments. Such conclusion of that safety does not
31 address or analyze the safe accessibility of the other entrances to the trail along Arlington
32 Road. Based on this, we urge that it violates the purpose clause and should be denied.
33 Thank you.

34
35 MICHAEL KNAPP: Okay, great. There are what, about 20 seconds left? Well done. Okay.
36 Ms. Barr will represent the applicants. There three minutes remaining for rebuttal.

37
38 ROBERT HARRIS: Okay. Ready? Okay. Good afternoon. For the record, I'm Bob Harris,
39 with me is Cindy Barr, who works with me. We have been kind of a tag team on this
40 project and I'm the one presenting and she'll answer any follow-up questions. Thank you
41 for the opportunity to present to you today. You've reviewed this project previously and
42 you remanded it so that we could modify the plan to make changes to; number one,
43 improve the compatibility with the Capital Crescent Trail; and two, to provide more



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1 information regarding the proposed traffic signal at the Southern Drive into the site. We
2 have done both. We believe that, as those Park & Planning and the zoning hearing
3 examiner that the revised the application now should be approved. You have been
4 oriented to the site, I want to call your attention though to not just one-story buildings in
5 the area, but the various five-story buildings as well. There's a five-story office building just
6 to the south of our site along with a five-story garage right next to that, and in just north of
7 our side, north and east, is a five-story parking garage for Ourisman Honda. Those
8 properties and five-story buildings are much closer to the trail and to the residential
9 community than ours. There's also the Federal Realty but that's upstairs project that also
10 is a five-story project just to the north. I also want to note that the outset here that despite
11 being in the Bethesda, hotbed of civic opposition, I'm actually pleased that we have very
12 limited opposition. None of the local civic associations opposed the project and nor does
13 anyone in the adjoining Sachs Subdivision neighborhood. One individual there did testify
14 at the first hearing, not necessarily in opposition, but he had questions. When we revised
15 the plan, he did not return as an opponent. We think we've done a good job of addressing
16 their comments. In terms of the--well, the same arguments that you've heard today were
17 made to the zoning and hearing examiner, and in fact the planning board before that, the
18 zoning hearing examiner has addressed each of them. It would be difficult for me in 20
19 minutes to do more than she has done in days of hearings, hundreds of--more than a 100
20 exhibits and in a very lengthy staff report. So I'm just going to talk touch on the highlights.
21 We certainly agree with her report. In terms of conformity with the sector plan, one of the
22 three issues you allow the opposition to address is the law. I hate to bring the law into this
23 as a lawyer but I do want to remind people that conformity with the master plan is not
24 absolute total 100% conformity. Beginning with the Woodwind-Luther Case in 1977, the
25 Richmore Case in 1987, and just the recent Terrapin Run Case earlier this year, the
26 courts have repeatedly said that master plans or guidelines with which proposed zoning
27 need only substantially conform, and that in quoting from Woodwind-Luther, that they're
28 continually subject to modification in light of actual land use development and serve as a
29 guide rather than a straitjacket and we think that's what applies here. Similarly, the zoning
30 ordinance provisions with respect to development plans clearly state that the
31 developmental plan is to substantially comply with the use in density, don't say 100%
32 absolutely no variations. The zoning hearing examiner correctly explains that this
33 requirement of compliance with the sector plan really is with its essential goals, this is the
34 way in which she explains that. And if you look at this project, we certainly do that. First, it
35 includes mixed use residential and commercial development using the PD-44 zone with
36 105 dwelling units. That's not just substantially in conformity with the master plan, that's
37 100% in conformity with the master plan. But beyond that, based on the record, including
38 the support for the application from both the planning board and its staff, the zoning
39 hearing examiner also concluded that the development plan itself is proper, finding that it
40 addresses the essential goals of the sector plan. And I'll refer you to her report rather than
41 reciting all of that. She recognizes that the Board approved does not require absolute,
42 unequivocal compliance with everything in there because, in fact, sometimes there are
43 conflicting provisions. She does address the two sector plan of provisions that the



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1 opposition would like to seize upon, not to have this project denied. One is the
2 construction of a new Post Office along with residential development here. And the
3 second is the building height including its relationship to the subdivision. With respect to
4 the combined use, they would not allow us to--the opposition to build a new Post Office if
5 we build the residential. If you look at the sector plan though, the primary section in terms
6 of Arlington Road development calls for a mix of residential and commercial space. They
7 rely primarily on a provision that's way at the back of the sector plan in a section dealing
8 with public facilities that says that expressing the belief at the time that continued use of
9 the existing Post Office facilities on part of the site would preclude residential. Now, that
10 may have been the case where somebody to build residential on that property while
11 retaining the existing Post Office facility, but that's not what's being done here. The Post
12 Office facility is a brand-new facility being located below grade with the housing above it,
13 not something that anybody looked at it at the time. And the zoning hearing examiner has
14 made specific conclusions about this based on the record. We think we found a creative
15 way in which to do both, to keep the Post Office there, which people want, and to build the
16 housing that the master plan wants as well. The master plan simply didn't evaluate that
17 option. In terms of the interrelationship, again, we presented extensive evidence from
18 architects and engineers, not just lay opinions as to the interrelationship, but expert
19 opinions about how this would function. And the evidence shows that most of those postal
20 vehicles are small delivery vehicles, really no bigger than an SUV that are coming in and
21 out of there. It's such that it's no different than most parking garages over which
22 residential units are built. There are some trucks coming in there, bigger trucks as well,
23 not uncommon to any loading facility where residential is built above. But the design of the
24 project is such that those movements are separated and put below grade, so that they
25 have no impact on the residential uses. As you heard earlier, we did submit an exhibit of
26 eight examples of combined commercial residential projects with major garages and
27 loading areas in them that functioned quite well. And you can imagine many more just in
28 Bethesda or wherever else you might travel. It's not uncommon at all in today's
29 environment. We want to be able to keep the Post Office there, but we think housing is a
30 good use for this site as well. Zoning hearing examiner found after her review that she
31 was persuaded by the preponderance, and I'm quoting, persuaded by the preponderance
32 of the evidence that the proposed building design which would separate the residential
33 and USPS uses and move all of the truck traffic underground coupled with construction
34 materials and methods designed to isolate the impact of noise and vibrations would allow
35 the two uses proposed here to coexist harmoniously. And she finds that any provision in
36 the Sector Plan, assuming they would not be there, would appear to serve no purpose
37 under this design. So we think that it is consistent with the Sector Plan in that regard. In
38 terms of height and setback, the second of the two are claims that we've heard here; we
39 have made changes to it to address those issues. We do point out here as well that the
40 Sector Plan language on which the opposition is relying is in a session called Design
41 Guidelines. And clearly, they are guidelines, it doesn't say design mandates and if you lay
42 all over that, the substantial conformity not absolute conformity with which were held, the
43 zoning hearing examiner has found that we are consistent with those. The original plan,



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1 the building was only 30 feet from the real property line, you would comment it about that
2 and as you heard, we'd moved it back so that--now it's twice that far from the property line.
3 And in addition to that, intervening between that property line where we have a 60-foot
4 setback, is about 80-foot right of way for the trail before you get to any residential
5 properties. It's sufficiently far that those neighbors are not opposed to it. We did lower the
6 building as well by--I have 4 feet, but I'll stand by Mr. Humphrey's more precise
7 calculation. And we did add a landscape buffer area there that will be fully visible from the
8 trail and even from other areas as well, to give it a more of a garden feel so that it is a
9 good transition there. We both the zoning hearing examiner and Park & Planning
10 conclude that the setback, the building height, the landscaping results in a project with a
11 lesser impact on the trail and on Sachs. Then even lower building would have, were closer
12 to the property line as would have been allowed. This, well, let me move on to the
13 compatibility issue because that overlays this same topic and again, you've asked us to
14 address three arguments, but the substantive issues kind of permeate all three of the
15 substantive issue. So we've addressed, I think, the main compatibility arguments that
16 you've heard, particularly noting the commonality of the five-story, four-story buildings
17 over one story of retail or other uses and how that will work. The opposition, in their
18 argument here today, I assumed they were going to discuss the traffic signal issue and
19 they have not done that. And so, I think the record stands by itself, the zoning hearing
20 examiner has made those conclusions. And if I would like to reserve some time, if they
21 come back and want to address that issue, I'll come back to that but they have not. The
22 third area on which the opposition has made some comments, it concerns the consistency
23 with the purpose clause in the PD zone. As the zoning hearing examiner correctly points
24 out, that purpose clause is pretty lengthy. She broke it down into nine paragraphs, it
25 actually covers two pages of the zoning ordinance and it is extremely broad and open-
26 ended, I compared to provisions in the Bible that you can read to say just about anything
27 you want to have them stand for. And in some cases, it's internally conflicting but in any
28 case it's never been held as something to which someone had to conform with everyone
29 of those purposes, because, in fact, many projects do not. Now, but this hearing examiner
30 did review those nine paragraphs and discusses each one of them in great detail finding
31 that the application does indeed accomplish the purposes of the PD zone and the
32 Planning Board and Staff, of course, found that before the hearing examiner did as well.
33 Mr. Klauber has focused on the connection to the capital of Crescent Trail which he
34 believes means that this project doesn't conformed with the purposes of that zone, and he
35 cited a few of those general provisions. But I think those provisions are so general that
36 they do not say that this project should have a public connection through the center of the
37 site between the sidewalk out front and the Capital Crescent Trail in back. And the record,
38 in fact, indicates that that was never the expectation at the time the Sector Plan was
39 adopted eleven years ago, I guess it was. The Sector Plan did contemplate access to the
40 trail for this use that was an asset of this site being located right on the trail. But, we
41 certainly recognized the practical justifications for not providing a public trail through a
42 relatively small site. This isn't like some big mixed use PUD over, you know, 20 acres or
43 something. It's a relatively confined site where we have a number of uses that we're



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1 attempting to address. But among the reasons for it not being practical, number one is
2 security. People don't want the public coming through their home site really, and are fairly
3 protective of that.

4
5 CINDY BARR: I don't think we found in the record that people are protective with that.

6
7 ROBERT HARRIS: Oh, they're worried about security.

8
9 CINDY BARR: We do have testimony from the applicant, that they think it would
10 compromise security to have the trail?

11
12 ROBERT HARRIS: Okay. Fine. I stand corrected. There is also evidence in the record
13 about issues with respect to the Americans With Disabilities Act and the grade differential.
14 There was a substantial grade differential, yeah, between the front and the rear site. And
15 there is this, the facility for the Post Office that is a structure as well that would have to be
16 dealt with. That creates a pretty substantial practical difficulty. Perhaps, most importantly
17 though, the record shows that there's no need for this connection. Just 200 feet to the
18 south where the other commercial building is, is another connect--can you point that out,
19 Cindy? Another connection to the trail where the public can access it right there. Okay?
20 There's another one further down at Bradley Boulevard, of course. And then, if you go
21 further up to the north, 387 feet I think it is, there's yet another one. So, there are ample
22 points where the public can access the trail right in this very vicinity, these are trail users
23 after all, they're not unaccustomed to walking 200 feet to get to something. So we just
24 don't think it makes sense to force another public trail through the site when it's so
25 compromised because of the site. We are doing things to improve walkability in the area,
26 that streetscape out in front is going to be greatly improved. As I mentioned, the green
27 area along the back of the building will enhance the walking experience for people along
28 the trail and the--and we're installing the signal at the driveway out front that will make
29 crossing Arlington Road much better than it is today, so that the people that Mr. Klauber
30 spoke about who want to get from one shopping facility to another will have a convenient
31 and safe way to do that. In conclusion, we just think it's a great project. We think it meets
32 the sustainability goals of the County, that it will keep in place a community serving, use
33 the Post Office that it'll place a large surface parking lot below ground, greatly enhancing
34 the visual appearance of the area. It'll add housing in a CBD where we want to do it, it'll
35 provide a traffic signal on a road where it is called for in the Sector Plan and will help the
36 shopping center across the street and it'll help the pedestrians in the area. We simply
37 endorse the zoning hearing examiner's recommendations and hope that you will as well.
38 Thank you.

39
40 MICHAEL KNAPP: Well, I just want to make one note. Mr. Harris, your reference is
41 potentially coming back to something if the opponents that raised it and you've got your 20
42 minutes now, so if you have anything else you wanted to say, you can't rebut the rebuttal.
43



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1 ROBERT HARRIS: Oh, okay. Okay, so you want me to use my time now?

2
3 MICHAEL KNAPP: Your time is now, so.

4
5 ROBERT HARRIS: Okay. Fine. Okay. That's fine. I can do that. Let me return to that then
6 at the potential of opening a can of worms. I do want to make sure you're fully informed
7 because the zoning hearing examiner was. We did meet all of the LATR standards,
8 there's no debate that we meet the traffic standards that are applicable to this area. We
9 also did a lot of work to ensure that it's safe adequate and efficient along Arlington Road
10 as well. And that boils down to the signal. We have separate driveways for the residential
11 use and the main postal trucks that are there. And there will be a signal installed. With
12 some effort, the applicant went out, got the shopping center owner across the street to
13 agree to allow our signal to be installed. Oh, by the way, here's one place where the
14 Sector Plan is fairly clear, they are recommending the signal in this area for any number of
15 reasons. Those of you have traveled that area know that it's not safe today to pull out of
16 that shopping center because of an absence of a signal. We're putting the signal and that
17 will benefit the shopping center and yes, it'll serve our project. The engineers did all the
18 studies to demonstrate that it will work effectively. DOT has agreed to do that and Park &
19 Planning staff supports it as well. DOT has allowed for to be done, we paid for it; I should
20 make it clear. But in addition to that, there was some discussion at the hearing below that
21 we were not guaranteeing that this would be done and therefore, the improvement wasn't,
22 in the words of the zoning requirements, reasonably probable of fruition in the foreseeable
23 future. It was uncertain. Well, we have a binding element in our application that says we
24 will not build this project until that signal is there. And so, not only as it reasonably
25 probable of fruition before this project gets built, it's absolutely certain of fruition before the
26 project gets built. And in the Greater Colesville Case, the Maryland Court of Appeals
27 specifically ruled that where the commitment is made like that, it makes it not only
28 reasonably probable, it makes it absolutely certain, and therefore, we meet that as well.
29 Thank you.

30
31 MICHAEL KNAPP: Thank you. Three minutes. I don't know how will you continue that up.

32
33 MARTY KLAUBER: Well, first, and with all due respect, the Richmore Case also stands
34 for the principal that the zoning ordinance, by referencing the Sector Plan can make those
35 Sector Plan Guidelines more than guidelines. It can make them standards. No zone in our
36 zoning ordinance does more about the Sector Plan than does the requested PD zone and
37 how it treats the Sector Plan and mentions it. Second of all, the record below does not
38 explicitly explore the accessibility of the existing entrances to the trail. Okay. That's it.
39 Thank you.

40
41 MICHAEL KNAPP: Thanks. Okay. Thank you, very much.

42
43 ROBERT HARRIS: You're welcome.



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1
2 MAL RIVKIN: I would like to say a master plan...

3
4 MICHAEL KNAPP: Oops, hold on. John, the microphone.

5
6 MAL RIVKIN: This violates the master plan, not the guidelines.

7
8 MICHAEL KNAPP: Okay, thank you. Okay. Questions from Council Members,
9 Councilmember Leventhal?

10
11 GEORGE LEVENTHAL: I just--I may be reading the plan wrong, so I'd just, the blueprint,
12 I'd like to understand. From Bradley Boulevard to the trail, it sure looks like there's a
13 pedestrian connection, am I incorrect? Then, there's a sidewalk to the North of the
14 proposed development?

15
16 FRANCOISE CARRIER: Yes. At Bradley Boulevard, there is access. There is access to
17 the trail at Bradley.

18
19 GEORGE LEVENTHAL: And it abuts the project.

20
21 FRANCOISE CARRIER: It doesn't abut this project. This project is not on the corner of the
22 Bradley Boulevard, there is...

23
24 GEORGE LEVENTHAL: No, no, but I mean, I'm sorry, in the Arlington Road. I meant
25 Arlington Road. What is that snaky thing that looks a sidewalk from Arlington Road to the
26 trail? What is that?

27
28 FRANCOISE CARRIER: That's only for site residents.

29
30 UNIDENTIFIED SPEAKER: That's internal to the project.

31
32 GEORGE LEVENTHAL: Uh-huh.

33
34 UNIDENTIFIED SPEAKER: It goes around the building.

35
36 GEORGE LEVENTHAL: Someone walking on the sidewalk in Arlington Road. It's fenced?
37 You can't access it?

38
39 ROBERT HARRIS: No, it has...

40
41 MICHAEL KNAPP: Mr. Harris, turn on your mic.



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1 ROBERT HARRIS: I'm sorry. There's a 15-foot grade differential, there are stairs there
2 that wouldn't meet the ADA requirement but it can be a secondary access point for the
3 residents of the project.

4
5 FRANCOISE CARRIER: For the residents of the project, yes. But the evidence was clear
6 that it would not be open to the public. I would be gated and locked.

7
8 ROBERT HARRIS: Right.

9
10 GEORGE LEVENTHAL: Okay. That's my question.

11
12 MICHAEL KNAPP: Thank you. Councilmember Berliner?

13
14 ROGER BERLINER: Let me see if I understand...

15
16 MICHAEL KNAPP: Roger, microphone please. Everyone's got issues with the microphone
17 today.

18
19 ROGER BERLINER: It's a long day. It's going to be a long day.

20
21 MICHAEL KNAPP: It sure is.

22
23 ROGER BERLINER: All right. Another, the dispute with respect to the public access, is it
24 the contention of Public Counsel that every project that is built is required to provide public
25 access, is that your contention?

26
27 MARTY KLAUBER: No, but this specific project built, being built where it is. And given the
28 verbiage of the Sector Plan that--as I said, does not say that the access is restricted.

29
30 ROGER BERLINER: I'm going to stay with you on this because I confess, I don't quite get
31 it.

32
33 MARTY KLAUBER: Okay.

34
35 FRANCOISE CARRIER: The Sector Plan says that there should be trail access from this
36 site.

37
38 ROGER BERLINER: From this site?

39
40 MARTY KLAUBER: Right.



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1 FRANCOISE CARRIER: Yes. It's specific about that. What the dispute is whether the
2 Sector Plan intended that access to be just for people living on this site if it were
3 redeveloped for residential.

4
5 ROGER BERLINER: Yes.

6
7 FRANCOISE CARRIER: Or whether it was intended to be public access from Arlington
8 Road through this site to the trail.

9
10 ROGER BERLINER: Okay. And was there a testimony with respect to whether or not
11 public access was necessary in light of the other public access points that exist?

12
13 FRANCOISE CARRIER: Yes, and it was hotly disputed.

14
15 ROGER BERLINER: And your conclusion with respect to that was?

16
17 FRANCOISE CARRIER: My conclusions were twofold. One, that I feel the Sector Plan
18 recommendation did not call for public access necessarily. It's not that specific frankly. I
19 was somewhat persuaded by Mr. Lanphere's suggestion that there's a diagram in the
20 master plan that appears in two places of the site with sort of a suggested layout and it
21 has an arrow from the site to the trail. He pointed out the arrow and it only goes in one
22 direction. And that if it were intended to be accessed for the public, it might go both ways
23 to suggest people coming from the trail could get on to the site. I found that somewhat
24 persuasive and also, there are three access points that are within a couple of hundred feet
25 of this site, the one that's closest, you have to use stairs. So, it has a ramp in the middle
26 for bicycles, so, bicyclist apparently use it. You push your bike up the ramp as you walk
27 up. It wouldn't work for somebody in a wheelchair, I don't know about a stroller. There is
28 access at grade at two streets that are within, one is about 200 feet, I think, and one is
29 about 300 feet. I also was persuaded by the fact that technical staff didn't feel that there
30 was a need for public access and didn't feel the Sector Plan called for it. In addition, the
31 applicant had what I felt was an understandable security concern that a private apartment
32 building doesn't normally have people walking through what our private above grade
33 terraces. They would have to be--would have to walk on the second level because the
34 ground level was completely occupied by building. They would have to go up the stairs on
35 to the second level and walk through the terraces outside people's apartments to get to
36 the trail.

37
38 ROGER BERLINER: So, Mr. Klauber, you've heard...

39
40 MARTY KLAUBER: Well, with all due respect, that little arrow was contained in an
41 appendix to the master plan and that appendix shows a development of this site that is not
42 being proposed. It shows residential development in three buildings.



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1 ROGER BERLINER: But...

2
3 MARTY KLAUBER: How can the arrow be in any way indicative of a proposal that flies
4 against that plan?

5
6 ROGER BERLINER: So, but is it your contention that because this is one building as
7 opposed to three and because it has a Post Office as opposed to not having a Post Office
8 that would've had because people really wanted to have what, public access to the Post
9 Office. I mean, what is the contention?

10
11 MARTY KLAUBER: Well, the contention is, first, that the master plan itself never even got
12 close to envisioning what is being proposed here. That's the master plan, there was a
13 technical appendix. That technical appendix does say a little bit about what the Council
14 when it adopted the Sector Plan, had some kind of an idea.

15
16 ROGER BERLINER: And is that, it's your contention with respect to that predicated on the
17 verbiage that you've quoted previously which was that if there was a Post Office, there
18 would not be residential?

19
20 MARTY KLAUBER: Exactly.

21
22 ROGER BERLINER: All right. And I take it then that you do not accept the contention that
23 what was contemplated at that time when that statement was made was the Post Office
24 that existed as opposed to this entirely redone Post Office that was done in with this
25 residential unit in mind. You reject that contention?

26
27 MARTY KLAUBER: Exactly, sir.

28
29 ROGER BERLINER: Because there's something inherent about a Post Office that...

30
31 MARTY KLAUBER: This is more than just--you see the basic contention, Mr. Rivkin went
32 to in great detail to say that this...

33
34 MAL RIVKIN: Carrier have been exempted. Carrier...

35
36 FRANCOISE CARRIER: The Carrier Annex.

37
38 MARTY KLAUBER: See, it's a Carrier Annex, we're getting semi-trailers up to, my
39 goodness, how many a day?

40
41 MAL RIVKIN: 65.

42
43 FRANCOISE CARRIER: Less than ten. The evidence is less than ten semi-trailers a day.



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1
2 ROGER BERLINER: Okay, so, less than ten semi-trailers. And how many are we getting
3 today?

4
5 FRANCOISE CARRIER: I assume the same.

6
7 ROGER BERLINER: So, is this Post Office being expanded in terms of...?

8
9 FRANCOISE CARRIER: Yeah.

10
11 ROGER BERLINER: It is? And the community, it was their testimony with respect to
12 whether the community believes that it's a good thing to have the Post Office expanded;
13 this is a plus or a minus to have the Post Office...?

14
15 FRANCOISE CARRIER: There was no community testimony in support. There was only
16 one person who testified other than the three people who are participating in oral
17 argument. And that person said that, well, I shouldn't say there was no testimony in
18 support. His name is Robert Smith, Smythe, I don't know. And he lives in the Sachs
19 neighborhood and he said there would be benefits because they wouldn't have to look at
20 the ugly surface parking lot that they now have. But they were concerned that the building
21 was too close to the trail and too tall. Now, that was in the original proposal, the building
22 is, has now have been pushed into the ground by 4 feet and moved back. This gentleman
23 didn't come back, so I don't know if the changes would have satisfied his concerns. He
24 didn't say anything about trail access that I recall.

25
26 ROGER BERLINER: All right, let me move on to the height issue. Let me understand what
27 is--define the height issue. It is now four-stories; is the residential unit four-stories on top
28 of one story?

29
30 FRANCOISE CARRIER: It's on four stories on top of the ones, an 18-foot one-story.

31
32 ROGER BERLINER: Tall one-story?

33
34 FRANCOISE CARRIER: It's a very tall one-story because of the Post Office's
35 requirements. So, it's closer to six-stories. That's how I characterized it. I think--but that's
36 only in Arlington Road because there's a grade differential. So, by the time you get to the
37 trail, what's visible is the four-stories of residential and then a few feet of wall that that's 2
38 feet in some places and then it gets a little higher as you go to the south end of the site
39 because there's another grade differential south to north. For most of the site, you would
40 see what they described as a knee-walls, sort of a 2-foot wall that's on the property line,
41 and then 60 feet of green area, and then you'd see the four-stories of residential.



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1 ROGER BERLINER: And it's the concern that's been expressed by whomever cares to
2 answer, Arlington Road or from the trail perspective with respect to the building height
3 issue?

4
5 FRANCOISE CARRIER: Trail perspective, gentlemen? I think Mr. Humphrey probably
6 doesn't like either one.

7
8 ROGER BERLINER: This would come as a great shock.

9
10 JIM HUMPHREY: It's not Mr. Humphrey, it's Sector Plan. It's not in conformance with the
11 Sector Plan, called for four-stories along Arlington with three-stories in the rear of the
12 property.

13
14 ROGER BERLINER: So, instead of three-stories along the rear, under this proposal we
15 would have four?

16
17 UNIDENTIFIED SPEAKER: We're going to four and a half as what the hearing examiner
18 stated. And instead of four along Arlington, you see the equivalent of a six-story building.
19 Fifty-percent, again, larger.

20
21 ROBERT HARRIS: Let me clarify.

22
23 MICHAEL KNAPP: Please turn your microphone on.

24
25 ROBERT HARRIS: Oh, I'm sorry. Yeah. The 18-foot per floor is very typical from our first
26 floor retail in any building, okay? So, it is...

27
28 FRANCOISE CARRIER: That's not in the record.

29
30 ROBERT HARRIS: Okay. Okay.

31
32 FRANCOISE CARRIER: You can't rely on that.

33
34 ROBERT HARRIS: Okay. Well...

35
36 FRANCOISE CARRIER: Please don't.

37
38 ROBERT HARRIS: It's a five-stories that's in the record to the front. It's not six.

39
40 ROGER BERLINER: And you're finding with respect to substantial compliance with the
41 Sector Plan, notwithstanding Mr. Humphrey's assertion, that Sector Plan is fairly specific
42 here. It says, acts in, so, he'd spent to which people are concerned that, "Oh my



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1 goodness. Are we just going to blow this off?" How do you comfort those in the community
2 that say there's a reason why we picked these height limitations.

3
4 FRANCOISE CARRIER: I guess, what I would say is that as a Sector Plan becomes
5 older, as of time when it was discussed and debated and voted upon grows more distant,
6 the details...

7
8 ROGER BERLINER: And when was the Sector Plan...?

9
10 FRANCOISE CARRIER: '94. It's fourteen years.

11
12 ROGER BERLINER: Okay.

13
14 FRANCOISE CARRIER: There are certainly older ones out there. But it's, you know, a lot
15 has happened in Bethesda in the last fourteen years, and I think that's in the record.

16
17 ROGER BERLINER: I think we can take judicial notice.

18
19 FRANCOISE CARRIER: I'm trying to referee myself too. It requires too many brains.
20 Thank you. I forgot where I was.

21
22 ROBERT HARRIS: Mr. Berliner...

23
24 ROGER BERLINER: A lot has happened in Bethesda since then, so the...

25
26 MICHAEL KNAPP: Yeah.

27
28 FRANCOISE CARRIER: Yes. Oh, and I guess my feelings, and this is really strongly
29 influenced by language that appears in the front of most of the Sector Plan that it says the
30 details matter less as the Sector Plan gets older. Look to the basic concepts, the basic
31 goals, the essential goals of the Sector Plan. And in my view, the essential goals of this
32 were not the specific height limits that they recommended. They put those height limits in
33 and at that time, I'm sure that they made sense and there were reasons for it. But to me,
34 the essential goals were to have a compatible mixed use building on this site that would
35 contribute to the Arlington Road streetscape and would be compatible with the trail and
36 the nearby homes. In my view, this building would satisfy that and I think that that's more
37 important than satisfying the very specific height recommendations that the Sector Plan
38 included. And this is a philosophical Sector Plan interpretation issue and like, you know,
39 people can reasonably differ on that and it's certainly the Council's prerogative if you want
40 to say the Sector Plan said four-stories and that's it. That's an acceptable interpretation, it
41 is not the one I recommend.



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1 ROBERT HARRIS: No wonder, is that the one I think that the Council has followed
2 repeatedly in Bethesda.

3
4 ROGER BERLINER: Mr. Humphrey, it has been suggested, I believe, by opposing
5 Council that this body should take recognition of the fact that the immediate neighbors, the
6 neighborhood associations who represent the neighbors are not here before us did not
7 protest as one who represents that community. Your council to me as to why I should not
8 take that into account as to the neighborhood associations like Sachs who are going to
9 bear the brunt, if you will, with respect to the adverse impact of this, and that there's no
10 representation from the Edgemoor Community, formal representation of the Edgemoor
11 Community, that they are concerned with respect to this. I understand your, if you will,
12 your philosophical concern and I understand your role with respect to the specific
13 federation generally. But in a case like this where a building is in--affecting
14 neighborhoods, that I have not heard from any of the neighborhoods that are affected
15 weighs on me as I assess the merits here.

16
17 JIM HUMPHREY: Well, first off, you haven't heard from any of the neighbors, it's because
18 it would be, an exparte communication, not allowed.

19
20 MICHAEL KNAPP: Well, that would've been in the record, somebody could've participated
21 at one point in this process.

22
23 JIM HUMPHREY: Yeah, I understand and I'll respond to that by saying that I was asked
24 on behalf of the Sachs Neighborhood and Mr. Smythe is the President of that
25 neighborhood association. On behalf of the Kenwood Forest II Condominium Association,
26 Myra Karst, that is the representative, they contacted me.

27
28 FRANCOISE CARRIER: I don't think this is in the record. Mr. Humphrey, there's nothing in
29 the record saying that you were speaking on behalf of anyone other than the civic fed, that
30 I recall.

31
32 JIM HUMPHREY: I thought I had mentioned.

33
34 FRANCOISE CARRIER: Well, it's possible at the very beginning but I...

35
36 JIM HUMPHREY: Ms. Edelman was there from the Concerned Citizens Committee for
37 Friendship Heights.

38
39 FRANCOISE CARRIER: She was?

40
41 JIM HUMPHREY: Yeah, she was in the room for much of the...

42
43 FRANCOISE CARRIER: Oh, we didn't speak. I wouldn't have known who she was, so...



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1
2 JIM HUMPHREY: That's right. Thank you, Council President. For now, that's so much as I
3 can do.

4
5 ROGER BERLINER: In addition, and we've already stated that...

6
7 MICHAEL KNAPP: Okay.

8
9 JIM HUMPHREY: The civic federation appears in support of master planning process as
10 well as master plan.

11
12 FRANCOISE CARRIER: Oh, I stand corrected. She did speak.

13
14 MICHAEL KNAPP: Okay.

15
16 FRANCOISE CARRIER: Ms. Edelman, for the Citizens Coordinated Committee for
17 Friendship Heights.

18
19 ROGER BERLINER: Did she speak during remand or in the initial hearing?

20
21 FRANCOISE CARRIER: Also the first hearing. And she was concerned mostly, she said
22 she agreed with Mr. Smythe and Mr. Rivkin and she was--voiced additional concerns
23 about traffic. She was concerned about how it would impact Arlington Road to have the
24 additional traffic from the residents.

25
26 MICHAEL KNAPP: Okay. Councilmember Elrich?

27
28 MARC ELRICH: I think Roger's question was appropriate and I think we better free out of
29 way to get answers to questions like that.

30
31 FRANCOISE CARRIER: Which question?

32
33 MARC ELRICH: Well, I think, the question was who Jim was speaking for.

34
35 FRANCOISE CARRIER: Yeah, I'm looking--I don't see any indication in my summary of
36 Mr. Humphrey's testimony that he spoke on behalf of anyone other than the civic fed
37 and...

38
39 MARC ELRICH: Yeah.

40
41 FRANCOISE CARRIER: And I would normally write that down.



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1 MARC ELRICH: But my concerns are basically, well, as follows: One, we had a
2 discussion this morning about planning in particular area and we got this little sedgeway
3 into the design guidelines. And either of these things are going to matter or they're not
4 going to matter, and the argument of the applicants seems to be that design guidelines
5 and master plans don't matter. And in that case, what do our master plans tell us, if
6 everything is just, you can dismiss it by saying, "It's only a guideline. I'm substantially in
7 conformance. I don't have to conform to everything." Then you start picking and choosing
8 and saying "What are the important things I'm conforming to and what are the things I'm
9 allowed to get a pass on?" And I don't believe the master plans have guidelines where
10 they say, "You can take a pass on XYZ as long as you conform to ABC." And I worry
11 about this opening up a very slippery slope, if we make a decision that you don't have to
12 conform with something that says four-stories and three-stories, that everybody is going to
13 come in and say, "The master plans and guidelines, I don't have to conform the four-
14 stories or whatever else the master plan says and at what point a master plans hold." I
15 mean, three years from now, four years from now, you know, there could be, you know,
16 the different level of economic activity in the county, and then somebody are going to
17 come and say, "People really wilding up building now." This is the only place people want
18 to build. So, your master plan that was done four years ago is no longer valid and, you
19 know, we should be allowed to change it, you know, what's the breakpoint where you say,
20 what the community set them, so they wanted our place to look like no longer matters and
21 how do you get to do that from one seat and ignore the whole process that a community
22 goes through in constructing a master plan. And while I looked at this, I feel pretty strongly
23 that this is not in conformance regarding the height elements. And I don't think you'd write
24 a master plan that says, and this site will have access to the trail knowing that the site
25 goes all the way out to the sidewalk, and somehow, I think that's an artful way of saying,
26 "We've got access to the trail, you know, one foot be on the sidewalk but not for the public
27 getting access to the trail." I mean, I think you could read that either way.

28
29 FRANCOISE CARRIER: That is certainly true.

30
31 MARC ELRICH: But, you know, my interpretation would be that if you're the master plan,
32 talking about uses of the site and you were to say this site would provide access to the
33 trail, I'd expect the public to have access to the trail. And frankly, I don't buy the argument
34 about the residence because if that's the case, we're going to have to shut off all those
35 accesses to the Capital Crescent Trail because there are plenty of accesses to that trail
36 which run between houses. And why don't we just shut down every access, every trail that
37 runs between two residents because it sure would be easy to hop over a bunch of three-
38 foot fences that line the trail and get access in the people's backyards and all the other
39 things that people are worried about. And I just think that's an illegitimate argument. I
40 mean, where you are opening a very slippery slope if you're going to say, that this
41 somehow some public safety concern that you're worried about people accessing the trail
42 causing harm to the residence. I got to say that I can hop the fence and cause just as
43 much harm to a resident. And if somebody is intent on doing that, I hardly think they're



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1 going to say, "Oh, gosh, there's no public access to trail. I better not go back and try to
2 break into one of these houses along with terrorists." I mean, if people want to do stuff like
3 that, they're going to do stuff like that. And if the fences were deterrent, it would have
4 resolved our crime problem a long time ago. So I take the view, this does not conform with
5 the master plan. And if it was four stories and three stories, I can buy that, I can accept
6 the idea that postal office, you know, and part of it is retail use of ten tractor trailers is
7 somewhat of an issue to me. But the nonconformance with the heights, I just think that
8 ought to dictate how we look at this and I can't get there myself.

9
10 ROBERT HARRIS: Mr. Elrich, may I respond briefly. I appreciate your position; I do want
11 to remind you however that, as I've mentioned, the provisions with respect to Hydro under
12 section called Urban Design Guidelines, I think the word "guideline" is pretty clear on its
13 meaning that it is a guideline and not a mandate. If it were Urban Design Mandates,
14 Urban Design Standards, that might be something different. But guidelines, on top of the
15 law with respect to the Woodward and Luther, and the Richmore and the Terrapin case, I
16 think, makes it very clear that it's not a straitjacket. Beyond that, you know, I think there's
17 zoning hearing examiners correctly pointed out that you have to look at what the purpose
18 is of the guideline. What are the essential objectives that they're trying to achieve and I
19 really do think we do that. In terms of the trail connection, you know if there are trail
20 connections between houses, it's on public property. I know of none that runs across
21 someone's private property.

22
23 MARTY KLAUBER: That wasn't in the record.

24
25 FRANCOISE CARRIER: It wasn't in the record but a Councilmember put something in the
26 record that was, you know, introduced the topics, so.

27
28 MARTY KLAUBER: And, again, he is misquoting Richmore.

29
30 MARC ELRICH: In the first place, just because this is a court case that says, "You can do
31 it," doesn't turn everything into just totally subjective whoever makes, you know.

32
33 ROBERT HARRIS: I'm not suggesting that. I agree.

34
35 MARC ERLICH; So, I don't feel compelled by those legal cases to see if we can do this. I
36 remain concerned about the height probably, I would guess, had to do with people's sense
37 of density and wanting. You know, feeling that it would be later on the edges and would
38 move in Bradley Shopping Center for across us. For example, across the street is fairly
39 low, that the density was to be packed more towards the center. Then, I can picture a lot
40 of reasons why people would have said, three or four stories of this part of Bethesda
41 rather than in downtown Bethesda where there's another battle going on over height that
42 you're well familiar with. So, to me, it's equally valid to say here that there was, that the



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1 intent was to create a certain kind of look in the field along there. And I think the three or
2 four stories creates that look and feel.

3
4 ROBERT HARRIS: Yup, the other buildings are fine.

5
6 MICHAEL KNAPP: No, additional, no comment necessary. Councilmember Floreen?

7
8 NANCY FLOREEN: It's probably not appropriate for me. I was on the Planning Board; I
9 had approved this plan in '94. But as for now, it's appropriate for me to say...

10
11 MICHAEL KNAPP: What you were thinking.

12
13 FRANCOISE CARRIER: It would be better if he didn't.

14
15 NANCY FLOREEN: Better not to, okay. I won't. That would be, that would be cheating.
16 Last March we remanded this for some specific reasons, so I just want to check with the
17 hearing examiner. On circle one in the draft opinion; it reiterates how we sent this back.
18 To better accommodate the recommendation of the planning board in compatibility with
19 the Capital Crescent Trail and their residential neighborhood. And could you tell us just,
20 you know specifically how this is achieved then?

21
22 FRANCOISE CARRIER: In my view, I would achieve that because the problems I had
23 regarding compatibility along the trail, the first time were that the highest underground
24 level was not totally underground. It was about six feet above ground along the trail. So
25 two feet from the trail, that was going to be a six-foot high brick wall. I felt that was a visual
26 intrusion on the trail that and it wasn't the same thing to say the building was thirty feet
27 away from the trail if in fact there was a six-foot wall on the trail. And then, the main bulk
28 of the building was thirty feet off of the trail. The applicant responded to those concerns by
29 pushing the building four feet down into the ground so that the six foot wall became a two
30 foot wall. That opened up a visual field from the trail and from the houses that didn't exist
31 before. They also pushed that residential portion of the building thirty feet further away
32 from the trail. So the building no longer cast a shadow on the trail and there is now a sixty-
33 foot sort of sloping area with some of it is walkway and some of it would be trees and
34 bushes between the trail and the building. In my view, that made--that very significantly
35 changed the relationship between the building and the trail and the homes.

36
37 NANCY FLOREEN: So that resolved, then in your mind, those points?

38
39 FRANCOISE CARRIER: Yes, it did.

40
41 NANCY FLOREEN: And then you asked for more specific evidence, I guess we did,
42 regarding how the traffic signal would affect conditions on the stretch of Arlington Road



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1 and the cooperation of the owner of Bradley, of the shopping center. And we've heard that
2 there's an agreement that this one wouldn't proceed without that.

3
4 FRANCOISE CARRIER: Yes, there is a binding element that they can't, if they can't
5 request the building permit until the traffic signal has been approved.

6
7 NANCY FLOREEN: So in your mind, that resolves that?

8
9 CINDY BARR: Yes, and they're, you know, there was evidence presented about queuing
10 analysis, about how much space there was for cars to queue to see if cars would be able
11 to stop without blocking other intersections at the new traffic signal and that evidence was,
12 in my mind, persuasive. There was anecdotal evidence in response to it, but nothing that I
13 felt really could undercut with the--it was technical staff that provided it.

14
15 NANCY FLOREEN: Okay. And then the last item we ask you to look at was the issue
16 about the setback from the real property line abutting the trail.

17
18 CINDY BARR: Yeah, there was no additional evidence offered on that point. So, my
19 analysis did not change. I felt that this property was in close proximity to a CBD, at six
20 hundred feet away. I took a county-wide view of what close proximity means because the
21 PD zone can be used anywhere in the county and there are certainly places that are miles
22 from a CBD, this is not one of them. And that hundred-foot setback is really on, it says,
23 that it's meant to protect the properties that are not within close proximity to a CBD. And
24 the expectations for closeness of buildings and privacy are different if you live very close
25 to a CBD than they are if you live, say in Damascus.

26
27 NANCY FLOREEN: So in your mind, then, that issue that the Council had is sufficiently
28 addressed by that, by the location, the urban location of this?

29
30 FRANCOISE CARRIER: I believe so.

31
32 NANCY FLOREEN: Okay. Well, given the answer to the questions that we asked, that
33 people surely continue to differ on, I guess. I'm satisfied that this satisfies the standards
34 and I'll move approval.

35
36 MICHAEL KNAPP: Are there motion? Is there a second to the motion?

37
38 FRANCOISE CARRIER: I second.

39
40 MICHAEL KNAPP: The motion is seconded by the hearing examiner for the approval of
41 the hearing resolution. Council Vice-President Andrews? I'm just trying to do two things at
42 once.



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1 PHIL ANDREWS: Yes. Thank you Council President Knapp. Well, I've listened carefully to
2 what the folks at the table said and I come down on the side of the hearing examiner,
3 Francoise, in terms of her interpretation. I think she got the spirit right of what was
4 intended and I think that it passes the compatibility tests. I think the changes that were
5 made addressed, but I think there were reasonable concerns about disability and I don't
6 think that the access directly to the trail is required from this building to the trail. I think that
7 the readily available access nearby is satisfactory. And so, I believe that the
8 recommendations of the hearing examiner are reasonable and I think judicious, and I
9 support the recommendation.

10
11 MICHAEL KNAPP: We have before us a hearing, a motion to approve the hearing
12 examiner's recommendation. Last comment, Councilmember Berliner? Turn on the
13 microphone please.

14
15 ROGER BERLINER: You'd I think after two years, I'd know how to do that. I wanted to
16 follow-up on what I thought was good questions by my colleague, Councilmember
17 Floreen, with respect to that which was re-submitted to you. And on circle one, it states
18 that you were to revise the plan to better accommodate the recommendations of the
19 sector plan, the compatibility with the Capital Crescent Trail which I believed you have
20 spoken to and the adjoining residential neighborhood. Could year speak to that again as
21 to what changed, if anything, with respect to this plan that you believe made it more
22 compatible with the adjoining residential neighborhood?

23
24 CINDY BARR: Well, that fact that they pushed the building four feet farther into the ground
25 so, instead of having a six-foot wall along the trail, very close to the property line, it's now
26 a two-foot wall for most of the property line. And that they pushed the building an
27 additional thirty feet back. So the main part of the building, the residential part, the part
28 that's completely above ground. So, instead of a thirty-foot buffer area, there is now a
29 sixty-foot buffer area between the trail and the four-story portion of the building. And I
30 found persuasive the testimony by the applicant's land planner that that, and the technical
31 staffs supplemental submission, that pushing the building sixty-foot back would create a
32 better relationship than having a three-story building closer to the trail. So, that was
33 persuasive to me that this was a compatible relationship. And really, the parties who have
34 asked for oral argument, I haven't heard anybody argue that is not compatible. It's just it's
35 a sector plan issue; it's a question of how you think the sector plan should be applied.
36 Well, I shouldn't say that, Mr. Humphrey, argued that is not compatible on the Arlington
37 Road side. If you certainly made that argument, I'm sorry, Mr. Humphrey.

38
39 ROGER BERLINER: Mr. Humphrey, I wanted to go back to the question with respect to
40 Mr. Smythe or Mr. Smith, whatever is his name is, Smythe. And in the record that's before
41 us, at any rate, on page 112, it indicates two things: One, that his presentation was not on
42 behalf of the Sachs, but as individual. And two, that he has not opposed the present
43 application. So, again, when I return to the things that are important to me as a District



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1 Councilmember, I'm not seeing the kinds of concerns other than the philosophical which
2 are not inconsequential. I'm not trying to suggest to you that they are not inconsequential
3 and I certainly have the greatest respect for Mr. Rivkin and all that he did with respect to
4 the sector plan. But it does mean something to me when I don't hear from the neighbors
5 themselves with respect to a project that is alleged to have a detrimental impact on the
6 quality of their life, so I do share that with you.

7
8 JIM HUMPHREY: And if I could respond briefly there, that wasn't the contention that that
9 Civic Federation was making at all, that this project would have a detrimental effect on
10 anyone's life. This is not in conformance with the sector plan, that's the point we're
11 making. And whether there are members of the public, in the community who wish to
12 come forward or not, that fact remains. And that is the issue on which the Civic Federation
13 represents not just this community but any community that's in the county with the master
14 plan.

15
16 ROGER BERLINER: And as long as we're real clear, and I appreciate your point of view,
17 that comes down to the question of what "substantial compliance" means. And that is
18 obviously a subjective term in which you can believe that substantial compliance means it
19 must comply with the height limitation, that's not something that there's any give on.
20 Whereas the hearing examiner and Park & Planning have concluded, no, there is
21 elasticity with respect to that term, that "substantial compliance" can mean additional
22 height in particular circumstances.

23
24 JIM HUMPHREY: Right. And that's why we pointed out nonconformance with the use, the
25 height, the density and the setback recommendations in the master plan, and that the
26 sector plan be given a great deference, there recommendations and objectives, not just
27 the objectives or the goal, the recommendations and objectives, and the Council's own
28 words from January's opinion be given a particular deference.

29
30 MICHAEL KNAPP: Okay. Okay. I would--I see no further comments. I would like to thank
31 the opponents, the proponents or the applicant. I think this actually has been one of the
32 better public oral arguments we've had, that this worked well. I thank the hearing examiner
33 for her efforts in this in regard as well. I see no further discussion. Madame Clerk, if you
34 would call the roll and the resolution to adapt the hearing examiner report.

35
36 CLERK: Mr. Elrich?

37
38 MARC ELRICH: No.

39
40 CLERK: Mr. Praisner?

41
42 DONALD PRAISNER: Yes.



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1 CLERK: Ms. Trachtenberg?

2
3 DUCHY TRACHTENBERG: Yes.

4
5 CLERK: Ms. Floreen?

6
7 NANCY FLOREEN: Yes.

8
9 CLERK: Mr. Leventhal?

10
11 GEORGE LEVENTHAL: Yes.

12
13 CLERK: Ms. Ervin?

14
15 VALERIE ERVIN: Yes.

16
17 CLERK: Mr. Berliner?

18
19 ROGER BERLINER: Yes.

20
21 CLERK: Mr. Andrews?

22
23 PHIL ANDREWS: Yes.

24
25 CLERK: Mr. Knapp?

26
27 MICHAEL KNAPP: Yes. The hearing examiner's report is adapted by vote of 8-1. Thank
28 you all very much. I appreciate your efforts and advocacy in behalf of the community. We
29 now turn to the Board of Health.

30
31 ROBERT HARRIS: Thank you, Mr. President, members.

32
33 MICHAEL KNAPP: Thank you. We wait just for a minute as we kind of shift gears.

34
35 NANCY FLOREEN: Did it just get cold in here?

36
37 MICHAEL KNAPP: It did get cold in here.

38
39 NANCY FLOREEN: See, you were complaining that it was hot. I said it was perfect.

40
41 MICHAEL KNAPP: Okay, thank you all very much. The Council is now turning to an
42 overview from the Department of Health and Human Services and friends, as I understand
43 it. As everyone is aware, each and every time we turn on TV, the radio or talk to each



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1 other, the hot topic of interest is the economy and its effect on us as individuals, our
2 families, our community and in any other various elements that are out there, the car
3 industry, the mortgage industry, you name it. But what often time gets overlooked is, what
4 is the effect of this economic downturn on those least among us, our most vulnerable
5 populations? And it's important, I think, as we are starting to get more clarity as to the
6 scope of the economic downturn. I think our social services organization are starting to
7 see very clearly the effect of this on individuals and have an updated release begin to give
8 us an overview as to that sad story. And so, as we start to undertake a review of potential
9 budget reductions, we see what the State is proposing as it relates to budget reductions. I
10 thought it would be worthwhile for the Department and various other agencies to come,
11 our Departments, to come before us and give us just some sense as to what is the impact,
12 what are they seeing and what efforts have they undertaken to transcend the tide, and
13 what other things you would be looking at the coming months. And so, Ms. Ahluwalia, I
14 believe, is the leader of the gang, and I don't know who else is joining you. But I thank you
15 all for putting the presentation together. And before we get started, everyone could just
16 introduce themselves for the benefit of those people who are viewing us on TV and
17 listening in from other places.

18
19 UMA AHLUMALIA: Good afternoon, thank you for this opportunity. My name is Uma
20 Ahluwalia. I'm the Director of the Department of Health and Human Services.

21
22 AMY GABALA: Hi, I'm Amy Gabala, with Manna Food Center.

23
24 BECKY WAGNER: Becky Wagner, Interfaith Works.

25
26 LISA CLAUDY FLEISCHMAN: And I'm Lisa Claudy Fleischman with the Montgomery
27 County Community Foundation.

28
29 MICHAEL KNAPP: Welcome to you all, we wish you are here under better circumstances,
30 but we look forward to your presentation.

31
32 UMA AHLUMALIA: Thank you. We have a little PowerPoint, I'm going to wait to see if it's
33 all ready or should other people talk. Okay, they do. Okay, so, should I go ahead and
34 start? Okay. So, what we wanted to do here today was to frame the conversation around
35 the hidden story of poverty in our county. We have, but we are circulating and what
36 everybody has in their pAcket is the new County Self-Sufficiency Standards for 2008. The
37 last time it was done was 2006 and it lays out the different computations of what it takes
38 for the family of one, family of two, family of three, family of four to live in this county and
39 what the cost of living is based on a certain set of indicators. So that's what you do have in
40 front of you.

41
42 MICHAEL KNAPP: Okay.



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1 UMA AHLUMALIA: That's going around in those packets. This is actually tomorrow, there
2 is a press briefing at 12:30 to release the self-sufficiency standard. And it's very powerful
3 information; it sort of tells you what it--how expensive it is to really live in this county, so.
4 What we did want to do is start the conversation about who is poor in our county? And
5 have that discussion, children are probably the most at risk. And the poverty level amidst
6 the affluence for our county, for children, is about 17%. It's one of the highest rates for the
7 band of counties into which Montgomery County fits in terms of affluence. So this is a
8 particularly significant fact. Single mothers and elderly women are at higher risk of
9 poverty. Disabled adults and elderly have special challenges. I do want to point out that
10 last year the Commission on Women picked single mothers as their population for whom
11 they wanted to, you know, conduct advocacy because they felt that they were most at risk
12 of poverty. Soaring energy costs, as you know, is based on our last discussion around
13 housing. First, they're impacting low-income residents significantly. There are growing
14 rates about less than pregnancy and this is very interesting data, over 30% of individuals
15 currently visiting the Montgomery Works one-stop have college degrees. And that's a very
16 powerful piece of information about what's happening. It is not just the very poor who are
17 looking for services and supports; it is also the people who have some ability, and have
18 earnings potential and history. Eighty-three percent of new customers coming to one-stop
19 are unemployed compared to 75% last year. There are inadequate mental health services
20 and system supports for youth, and you see that in terms of the rise in anti-social behavior
21 and risk of suicides. Low wages are increasing, their reliance on public assistance and
22 there's lack of affordable housing for those below 30% of AML. These are all facts that you
23 know very, very well. The ranks of the uninsured are growing in the country, rising food
24 cost, increasing hunger and impact of Freddie Mac and Fannie Mae restructuring on
25 corporate giving to a nonprofit is another big issue that we do have to pay attention to.
26 When we tallied up the dollars, it is upwards of \$5 Million and a little bit under \$10 Million
27 in terms of the net loss of corporate giving by Fannie Mae and Freddie Mac for
28 Montgomery County. It's about \$47 Million for the Greater Washington Area. And
29 particularly, homeless programming and child welfare programming, children's
30 programming and higher education are impacted. When we, as part of the Kennedy
31 cluster, took a look at the ZIP codes that were showing increased evictions and request
32 for emergency assistance, these are the ZIP codes that you see: 20904, 20906, 20874,
33 20877 and 20850. So what do you see? You see, Wheaton, Silver Spring in that corridor,
34 you see Germantown, Gaithersburg, and then you see Rockville. As what you'd expect, I
35 think that we're trying to run the same ZIP codes around other areas of need, like as
36 domestic violence on the increase, so we're seeing more suicide risk on the increase. We
37 did get information from the Mental Health Association and the ZIP codes didn't track
38 exactly around us. So when we complete that analysis, we'll know, is it just these ZIP
39 codes, are there other ZIP codes because we anticipate that some of the ZIP codes right
40 around University Boulevard, you know, Long Branch Community will also come in to the
41 mix for being vulnerable. So here's some shocking facts around poverty. Food stamps and
42 public assistance caseloads have grown by over 16% in FY08, and temporary cash
43 assistance case load has grown by 12% in the same time period. And this is first time in



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1 12 years of Welfare Refund that we're seeing an increase on the temporary cash
2 assistance case load. And one of the things we're finding is because a lot of our folks, and
3 this is where the Self-Sufficiency Standard comes in, don't qualify for Federal Assistance,
4 for a family of four at that poverty threshold to qualify for service is \$20,000 and for a
5 family of three it's \$17,000. And a lot of the people who are walking in to our offices now
6 have incomes above that but don't have enough to live sufficiently in Montgomery County;
7 42% increase in application so far from '09 to '08 for our income support services. In
8 September 08 alone, in Germantown, the volume of customers coming in grew from 3200
9 to 5000. And of those on average about 50% or so were not eligible for the services that
10 they were coming in for. So that tells you the level of need and who is in need, it is not the
11 very poor. It is those folks who were in the significant distress at this moment in time.
12 Countywide, the home energy applications grew from 7828 in 07 to 9043 in FY08 and that
13 doesn't include the first five months of this fiscal year. All 28 family shelter beds are full; all
14 single-adult shelter beds are full and we have an all time high of 52 families in motels and
15 many more living with friends and family but are homeless. Manna gave away and Manna
16 is here and they're going to be talking some more but they gave away free groceries to
17 over 1400 families by September of this year, now was a 48% increase just for them
18 alone. And they'll tell you quite eloquently how much at risks they are of running out of
19 food. There was a 39% increase in child neglect calls from 07 to '08. And one of the
20 things we find is when people don't have money to look for quality childcare, they make
21 poor decisions about who's going to watch their children and that's often, it's the
22 supervision that often leads to causing on child neglect and we're seeing an increase in
23 those calls. Mental Health Association suicide hotline actually showed a 150% increase in
24 referrals from about 20 in July to 50 in October. Now, is that enough of a trend to watch? It
25 is just something to watch over, I don't of it is, you know, it has to be trended over a period
26 of time to actually say that this is something that's of significant concern, but just as pretty
27 stunning that in one four-month period we saw such an increase in calls. So, the family
28 self-sufficiency standards, that little yellow booklet that we just handed out measures the
29 level of income at which a family is considered to be economically self-sufficient. And then
30 it includes cost of housing, child care, food, health care transportation, tax and
31 miscellaneous expenditures. The federal poverty level for a family of three, \$17,600. And
32 in Montgomery County that same that standard says that a family would need \$72,646 to
33 live above poverty and most families, therefore, are ineligible for federal aide. And one of
34 things we do want to have some conversation around is the advocacy that we need to
35 have at the federal level in adjusting the food stamps threshold, the Medicaid threshold,
36 the poverty threshold for our temporary cash assistance. I mean, this is an opportunity for
37 us to think about now, Advocacy Agenda 2. Just a little bit more data, in 2005, with an
38 average household size of 2.66 persons, 26% of the county's household had a median
39 income of less than \$49,999. This is Park and Planning data. And the self-sufficiency
40 standard in the county back then was \$61,438. In 2008, two years later, that standard has
41 gone up to over \$72,000 and some of this, the assessments, you know, that we did was
42 around the time when gas prices were up at over \$4 a gallon. So that did have an impact
43 on food prices and everything else. Gas prices had dropped to around little over \$2 a



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1 gallon, so will that have an impact, probably, but it doesn't change the fact that the
2 housing market has gotten very, very tight. And in addition to that, I mean, food and
3 everything else has actually risen in cost. And in 2005, 1695 county households live below
4 the poverty level and of those, 4346 households had related children 18 years of age or
5 under. This is 2005 data. Now, in 2008, Department of Park and Planning updates that
6 information, we will certainly let you know what that figures is looking like, but the poverty
7 among children is fairly high. So the three things that we wanted to engage in is, one, is to
8 keep telling the story about poverty in the county because it is a hidden story and more
9 and more people need to find out that this is not the story of another city we're talking
10 about. This is our county. To advocate for resources of the federal, state and local levels
11 because that's a particularly acute conversation right now as everybody is talking about
12 cuts, and if there is to be a stimulus package, what that needs to look like for our country
13 and our residents. And then helping our neighbors in need, and this is a conversation that
14 is now a public-private conversation where we're talking about what are those distressed
15 neighborhoods and what is that that we need to do to strengthen the safety net in those
16 neighborhoods, that we talked about those five ZIP codes and any others that we identify,
17 how do we deepen the helping systems in partnership because clearly, government, we
18 can't do this alone, I mean, we have this conversation and housing version of potentially
19 emergency assistance could run out in April. So what is that partnership look like for us
20 together and how do, and you know, often we had a conversation this Sunday with the
21 faith-based Community, that was a very successful conversation. A lot of the, you know,
22 leaders in the faith community were there, and there was a general consensus that there
23 needed to be a shared effort that they would be stepping up to help us as well, particularly
24 around holiday giving and then year-round giving and what should that look like. So, there
25 are tremendous possibilities, part of the reason we're here before you having this
26 conversation is to raise the consciousness and then to see who else can join forces with
27 us and this many people as we do. The more the potential for solution that will build a
28 safety net and take care of our neediest residents. So, I will close with that and either take
29 questions now or take questions after everybody else has spoken, so whichever.

30
31 MICHAEL KNAPP: Okay, three presentations? Okay. Go ahead, let's do those real quick
32 and then we'll do questions.

33
34 AMY GABALA: Hi. I'm Amy Gabala, the Executive Director of Manna Food Center. For 25
35 years, Manna has fought hunger and fed hope in Montgomery County. And in all that time,
36 Manna has never experienced an increase in need like we are seeing now. In October
37 2007, about 2100 families obtained food from Manna. Last month, 3124 families turned to
38 Manna for help putting food on the table. That's an unprecedented, 48% increase in need.
39 In this worsening economy, so many of our neighbors are struggling. Families who were
40 making it a year ago now wake up to empty pantries and empty bellies. The rent must be
41 paid, the utilities must be paid. People need gas to get to work so the first thing they skimp
42 on is food. It's often the only part of their budget that has any flexibility, even if that
43 flexibility translates into skipping meals or eating half portions. So, many of Manna's



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1 clients are the people you see everyday. The woman earning minimum wage, who rings
2 up your purchase at the store, the man walking his kids to school before heading off to the
3 construction site where he has seen his hours cut in half. The senior citizen debating
4 whether to buy medicine or food that month. The third-grader who arrives at school on
5 Monday famished because there are no school lunches on the weekends to nourish him.
6 The folks earned too much for government assistance yet too little to be self-sufficient. To
7 feed their families, they turn to Manna. Montgomery County is an incredibly caring
8 community, corporations, individuals, faith-based organizations, youth groups in schools
9 have all responded to this crisis with great generosity. But even with this outpouring of
10 support, the ever increasing demand for food means that Manna may soon face its own
11 bare shelves, the math is simple. More pounds of food going out than coming in, but the
12 solutions are more difficult to figure out. That said each day I witness a new, the big
13 hearted, dedicated spirit of our community and I have no doubt that even during this hard
14 economic times, that we will not let our neighbors in need go hungry. Thank you.

15
16 MICHAEL KNAPP: Thank you very much.

17
18 BECKY WAGNER: Hi. I'm Becky Wagner with Interfaith Works. There are a few pieces of
19 information I wanted to share with you. Our clothing centers serve over 5000 families a
20 year, 15000 individuals. And in the 12-month period use is up 48%. I often consider that
21 an eviction prevention program because if you do not have to buy school supplies or
22 winter coats or boots, you can pay your more forgiving bills. The calls to our utility and rent
23 assistance, help emergency assistance coalition have doubled. In our office alone, we
24 field about 2300 calls a year for people asking for assistance trying to cobble it together,
25 that has doubled. More than half of the 65 women at the Wilkins Avenue Shelter are first
26 time homeless. Many of them have jobs. Our family case workers are finding empty
27 refrigerators and babies with raw bottoms because their parents can't afford diapers to
28 change them often enough as they should. And it's true that the calls to the suicide line
29 are increasing and that the child and domestic violence is increasing. And it's simply the
30 pressure; we're living in dangerous times. Our case workers are seeing dangerous
31 situations, and even at the county crisis centers you're finding dangerous encounters with
32 people who are simply desperate to support their families, or to retain their livelihoods.
33 Just Sunday, Reverend James Forbes, B'nai Israel gave an awesome sermon. And if
34 anyone was there, you probably will recall it, but what he talked about was an old hymn
35 about a storm brewing out on the sea that we can't see. In fact, the tsunami was not
36 anything that anyone knew was coming. We don't have that excuse. We see it right now.
37 We can feel it right now and it's not going to be better 18 months from now because just
38 as someone hoped that good economics will trickle down, while Wall Street is trickling
39 down in a really hard day for our working families, Miriam, that I met on Sunday said to
40 me, she was there to strategize on how to help the community, said to me, "I don't know
41 what I'm going to do. My husband is going to lose his job next week. We have four
42 children, one in college. I have a part-time job. Where can I get utility help? Where can I
43 get health insurance for my family? And how do I get over the shame of having to ask?"



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1 This is a whole new community of people who are coming to our doors. Now, there's a
2 second piece of this that I want to talk to you about and that is the nonprofit community
3 and how we are, we're your best deal in town in terms of leveraging your dollar for our
4 dollar and the community's dollar. But we too are having trouble keeping the lights on. And
5 I want you to know, as an example, we will be meeting over the next two months to cut
6 \$500,000 from our \$4 Million budget. That's Fannie Mae money, Freddie Mac money,
7 Foundations based in stocks that, you know, 5% of nothing is nothing. Year-end giving
8 that comes in the form of stock gifts, and corporations having to make choices about
9 keeping employees or continuing charitable contributions and we're just one of many. We
10 have a broad funding stream, but it is simply less, you know. When we had Katrina, we
11 had 9/11, we could weather that because they were just pieces, it's all coming down now.
12 So I just want to say this and I hope you don't feel like I'm preaching at you, I want to say,
13 as leaders, you have a really tough job ahead of you, and this is one of those times I think
14 that you get a pass when you say on this one, if it comes to repairing a road or building a
15 building, I'm going to say no, I am going to find a way to help Miriam's family. I'm going to
16 help find a way to help young Peter who came to school and said to his teacher, crying,
17 "Would you make sure that the bus driver knows how to get me to the shelter home? My
18 mom lost her job and I don't live at home anymore." You get to make those choices and I
19 can count on you, I know you are great people. I know I can count on you to make the
20 right choice. Thank you.

21
22 LISA CLAUDY FLEISCHMAN: Good afternoon. I'm Lisa Claudy Fleischman, representing
23 the Montgomery County Community Foundation. I'm a member of the Board of Directors
24 of the foundation. I chair its Grants Committee, and also my family house is its charitable
25 giving fund, our family charitable giving fund at the foundation. And I also just wanted to
26 share a few observations with you about the state of private philanthropy in our
27 community in response to the needs that we are addressing today and what the
28 community foundation is doing to promote that philanthropic giving. Becky has alluded to
29 and I think we are all pretty well aware that in this economy we are facing nowadays, with
30 people or organization's assets being anywhere from 15% or 25% or more, decreased
31 from what they were before. There's just less wealth that people have to give away, and
32 we are very much in the midst of a slowing down or a decrease in private charitable
33 giving. Surveys of nonprofits that were already looking at their fund-raising performance
34 for the first nine months of this year showed that one-third of the nonprofit organizations in
35 this country had raised less money in the first nine months of 2008 than they had for the
36 same period of time in 2007. So we have been entering a decline. Gifts from individuals,
37 charitable gifts from individuals which actually represent three quarters of all charitable
38 giving in this country, are likely to be softening and slowing down right now. Surveys are
39 suggesting and we are certainly seeing that the corporate giving is remaining flat this year
40 at best, and we have certainly got two examples of which we are very aware, both Fannie
41 Mae and Freddie Mac, whose charitable contributions programs have pretty much
42 diminished or disappeared. And to give you some sense of that order of magnitude, those
43 two companies alone, who have been among the most generous corporate contributors in



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1 the greater Washington area were responsible for \$45 Million in charitable giving in the
2 last year. And as we are becoming painfully aware, this economic downturn is happening
3 right as we head into the final quarter of this year, which traditionally has been a big fund
4 raising season for nonprofit organizations. Many of whom have received as much as half
5 of their annual operating revenue from fund raising in the final quarter of the year. So, yes,
6 it's pretty sad news. What's the community foundation doing about this? Our message to
7 the community, give where you live, and this is the message that we've really been
8 conveying in the 12 years that the foundation has been in existence, and I am happy to
9 distribute this to the Council. We are really--this is something that is actually featured in
10 the current issue of Bethesda Magazine. This was very much our message also in our
11 recent annual event celebration of giving that was held earlier this month. We are striving
12 to remind families, individuals in this county to give where they live to. And in hard times
13 like these, people who--the hard time like this are hardest on people who have the
14 greatest need. We are hopeful also that where there is poverty in need, there is also
15 generosity. And one of the things we particularly promote to prospective donors to the
16 foundation is their participation in the sharing Montgomery fund. That is our foundation's
17 community fund which supports nonprofits like Manna Food Center, like Interfaith Works
18 that are working to serve the county's neediest families, children at risk, and vulnerable
19 seniors. And we're making a point of showing how giving to the sharing Montgomery fund
20 is a really great way for donors to leverage their giving and to support the community and
21 make a difference for those who are most in need. When we look at trends and best
22 practices in philanthropy and in the nonprofit sector these days, I would say that our
23 efforts in the foundation are focusing on three general objectives right now. One is to be
24 strategic about giving. Second is to be working with public funders and other private
25 funders to leverage our investments. And the third is to be assessing how nonprofits might
26 be able to share resources and collaborate. Let me speak a little bit about being strategic
27 about giving. We, at the foundation are very much working to focus in particular on those
28 organizations like the ones we are hearing about today who are providing essential
29 human services in the county and who are likely to survive this economic downturn. Our
30 sharing Montgomery fund has a grant application deadline of late August. And as we now,
31 in the fall and early winter, are visiting the 45 applicant organization who were taking a
32 look at, we are very specifically asking the staff and Board Members of those
33 organizations how they're planning to get through this economic downturn and dealing
34 with the economic realities we are facing now rather than just carrying on with business as
35 usual. And we're encouraging applicants to re-specify their specific funding requests to us,
36 especially if what they wrote to us in August was, you know, thoughts, which seemed right
37 at the time about expanding programs or piloting a program that might not actually relate
38 to their core competencies. And our funding decisions for the sharing Montgomery fund
39 will very much be based on our assessments of how nonprofit organizations are getting
40 through this downturn. We are keen also to use leverage and work together with other
41 private funders as well as the county and to really leverage our investment in the nonprofit
42 sector. You may be well aware that the county participates in a funding collaborative with
43 us and with a number of other private foundations. This is an initiative called the nonprofit



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1 advancement fund in which we are ascertaining the needs and investing in some of our
2 nonprofits in the community to increase their organizational capacity to serve emerging
3 communities in the county. And lastly, as I said I think it's going to be important for us to
4 assess how and encourage ways that nonprofits in the county can share resources, how
5 they can collaborate, how they can partner, how they may even have opportunities to
6 merge, to go forward with their efforts. So this all leads to a fairly complex questions and I
7 think a deeper conversation about philanthropy and needs in the community, which all of
8 us at the foundation look forward to having and continuing with you. And we would be
9 happy to be organizing for their discussion about it. Thank you.

10
11 MICHAEL KNAPP: Thank you all very much. Thank you for the advocacy that you provide
12 because that allows us to make sure that we at least have the right information to know
13 what's in front of us. And so, thank you for taking the time to come and present to us
14 today. As you might imagine, most Council Members have questions or comments. Let's
15 start with the chair of the Health and Human Services Committee, Mr. Leventhal.

16
17 GEORGE LEVENTHAL: Mr. President, thanks for organizing this discussion. And I'm glad
18 when we are in a period of economic turmoil, that we have a dedicated Director of Health
19 and Human Services like Uma Ahluwalia. I know that she has a great dedication to
20 serving these people in need. We are going to discuss on Thursday the budget savings
21 plan that the County Executive sent over, which cuts hundreds of thousands of dollars out
22 of Montgomery cares and cuts a substantial amount of money out of the rental assistance
23 programs. So, as we are being asked by nonprofit advocates like Becky Wagner, don't cut
24 the HHS budget, indeed we are cutting the budget that affects these very people who are
25 underneath these self-sufficiency thresholds that Uma is giving briefings on. Now, I know
26 that we have to make cuts in the budget and we have to find the cut somewhere. I wish it
27 were as easy as Becky Wagner suggests that we could simply identify buildings that
28 maybe don't need to be built this year. The reality, as Council Members know, as the
29 buildings are built with bond proceeds and social services are paid for with operating
30 dollars and most of the savings we need to find are operating dollars and we can't transfer
31 the bond proceeds that we might use to build a building into our operating program. We
32 just can't do it. It's two different budgets, so I mean...

33
34 NANCY FLOREEN: Good try.

35
36 GEORGE LEVENTHAL: So, the big challenge is going to be to explain to most of our
37 residents, although poverty is rising, most of our residents are not poor. And the big
38 challenge is going to be to explain to most of our residents that the tax dollars that they
39 pay, they may not see the immediate benefits in recreation programs in neighborhoods
40 that are not poor or in library services in neighborhoods that are not poor, or in road
41 maintenance, which is paid for out of operating dollars in neighborhoods that are not poor.
42 And that's going to be the big challenge for Councilmembers if we agree with the appeal
43 from the nonprofit community, the faith community, that in a time of crisis you have to



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1 prioritize and perhaps the neediest ought to come first. The neediest rarely e-mail us. We
2 rarely hear from them. They rarely testify at public hearings. Their advocates testify. Amy
3 Gabala and Becky Wagner testified many times. We see them all the times. They're here
4 frequently. But we don't get hundreds and hundreds and hundreds, that the 52 families
5 that are now in motel placements, they don't e-mail us. They don't testify at public
6 hearings. And the people who we do hear from are not usually the people in need. So
7 what is the biggest challenge that we face is recollecting that we represent the big public,
8 not only--of course we do represent the public that testifies at public hearing but not only
9 that public. And the skewing of benefits and dollars that those who testify request may not
10 necessarily be addressing the needs, the most critical needs. So, its a complicated point,
11 but as we worked through the budget, I just hope that the call that is being made both in
12 the week ahead as we talk about the budget savings plan and in the months ahead, as we
13 talk about the budget, that we try to recollect that Amy and Becky are not just Amy and
14 Becky, that the people that they're serving are thousands and thousands, and thousands
15 of our constituents who we won't see and we won't hear from. And we have to keep them
16 in mind as we respond to the more fortunate neighborhoods who we will hear from, who
17 we will see.

18
19 MICHAEL KNAPP: Councilmember Trachtenberg?

20
21 DUCHY TRACHTENBERG: Thank you, President Knapp. And I wanted to start my
22 remarks off, I have some observations and request. But I want to start off by thanking
23 Uma and those that are here this afternoon, who have joined us for this presentation
24 which is clearly compelling. I don't think it's surprising, but clearly the numbers really tell a
25 story that isn't often out there, at least not true today, and clearly it's a story that needs to
26 get out there. But I want to thank you for being here this afternoon. You know, one
27 observation I would have, when we look at those five ZIP code areas that have significant
28 needs, I would almost take a guess that in those ZIP codes and the schools there, the
29 elementary, middle and high schools, there is probably a much higher demand for some
30 of the responsive services that are provided through the guidance units. And I wonder if at
31 some point in the future it wouldn't be beneficial to have a dialogue with the school system
32 about schools and those ZIPs because I know from my own experience working with the
33 needy in the community, that it's typically certain school clusters where you see the
34 biggest demand for responsive services. And I do know that there is some data that could
35 be gotten through the school system. I remember when I sat on a school board committee
36 years ago, we did for a few years' running a report on responsive services. And it was
37 very interesting because, again, when you don't have adequate services array in the
38 county, very often it's the school system that becomes a de facto mental health setting.
39 And I can't help but think that kids that are in those ZIPs are probably even in greater
40 need than their families. You know, I would comment around the suicide hotline, the
41 mental health's association increase in calls around suicide. A few months back, I had my
42 staff evaluate some of the state numbers on suicide, and what we were able to determine
43 through some data sets that we had received is that there has been an increase in suicide



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1 attempts and suicides in two very distinct populations. One, adults under 25, and the
2 other, mature adult seniors over 65, and would certainly line up with what is being
3 suggested in the presentation. Today, I heard Becky make mention of the fact that in
4 these kinds of environments, it's not unusual to see an increase in family violence,
5 domestic violence, and certainly research over the years has historically shown that in
6 very difficult financial times there is an increase in the domestic violence and there's also
7 an increase in substance abuse treatment needs as well. So, I can't help but think that
8 we'll going to see more people at the crisis center looking for assistance in those two
9 ways. And I think another thing we've got going on at this time, which only compounds the
10 challenges that we have before us, is that we've got more and more vets who are coming
11 home up to this county who are in need of housing assistance, mental health service, just
12 basic, you know, responsive services, and we really don't have right now, at least in my
13 judgment, a plan and money in place where we can actually develop some of the
14 programming, and I think that really needs to be said. I know that the department
15 continues to get calls from folks who are coming back from both Iraq and Afghanistan, and
16 I'm sure my office is not unique; because we've had a real increase in phone calls from
17 vets. We even had calls from Representative Van Hollen's office. And you know, that both
18 Uma and the team had worked with my office at least one or two times to try to find
19 emergency housing for returning vets. So I see that is another real crisis that's going to
20 become more of a crisis probably in the next year or two. So, no doubt, we have
21 challenges but I'm one of those people that thinks, well, these provide us with
22 opportunities and I think despite the difficulty here, there is an opportunity for us to
23 empower our community. We need to mobilize them both, you know, in affect by doing
24 that we're empowering them. And one of the things that I would hope we would be able to
25 look at over the next few weeks and months, and it's beyond the idea of really doing public
26 education and coming up with a short and long term strategy. One of the things I hope
27 we'd be able to do is really figure out a way that we're going to be able to advocate on a
28 legislative level in Annapolis. I think that is a huge area to focus on. I do not believe that
29 this county gets a fair share of money on a lot of--in a lot of categories. But I most
30 definitely believe around social services, human services, we do not, and that
31 conversation is long overdue with our delegation. And I think we've got to be really
32 proactive about developing a strategy this year, because that strategy not only needs to
33 address what's happening this year around cuts, but it has to be a multi-year strategy. I
34 mean, this not a problem, set of problems that we're going to be able to deal with in one
35 year, and I feel for too long we've not really had those conversations. So, I would hope
36 that we can all work together with the Executive Branch and with our committee partners
37 to come up with a strategy. Yesterday, I had a conversation with the Council President
38 and Vice-President. We were all reflecting on different books that we had read that were
39 authored by Doris Kearns Goodwin. And one of the books that I referenced was a book
40 that she had written back about 10 to 12 years ago on Eleanor and Franklin Roosevelt.
41 And of course, you know, Franklin Roosevelt is someone that many of us are thinking
42 about and talking about in these last few weeks and months because I think there's such a
43 parallel between some of the challenges that we face now and that we faced back in the



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1 early '30s. And this morning, after having my first cup of coffee, I actually went to my
2 bookcase in my den and I took down the book on Franklin and Eleanor. I wanted to share
3 a quote from the book. I remembered it, it took me a while, that it almost took me 40
4 minutes to find it, but I did. And I wanted to share it with everyone this afternoon, knowing
5 we're going to have this conversation. The test of our progress is not whether we add
6 more to the abundance of those who have much. It is whether we provide enough for
7 those who have too little. And I believe, I would submit to my colleagues that the Council
8 be facing that exact test in the weeks ahead, and I hope that we're able to come up with a
9 strategy and some solutions because I think we can, but we're going to have to work very
10 hard to make that happen.

11
12 MICHAEL KNAPP: Councilmember Ervin?

13
14 VALERIE ERVIN: Thank you all for being here. What I most appreciate about this
15 conversation and what you have brought to us is putting poverty in context. So for a very
16 long time and Uma, and Becky, and Amy, all of you know that we, we've had poverty in
17 Montgomery County, but it's something that has been sort of hidden under the rug. And I
18 think what's happened in these last few months is that, it is not the most poor of the poor
19 that we're hearing from, it's the people who are two and three, you know, steps away from
20 that level of poverty that all of a sudden now we're really beginning to hear from people we
21 haven't seen nor heard from before, I'm sorry that George left because I think putting
22 poverty in its proper context is going to be the real struggle that we all going to have to
23 deal with here. Almost 26% of every single school-age child that goes into a school
24 building qualifies; their family qualifies for free and reduced meals. That is a significant
25 number of families and children living in poverty, in our county. And I think that, for all of
26 us in Montgomery County, this is something different for us to sort of admit that we have
27 poverty and that it's growing, and it's growing in different ways. You all mentioned, I
28 thought, very significant points along your presentations, one, more poverty among a
29 college graduates, more poverty among families and single women. So we have a
30 challenge before us that's pretty steep. And I really like, Becky, what you said about, let's
31 just not build a few buildings and put some food on the shelves in Manna's food banks.
32 And so, for me, whenever I go into a school building and I hear anecdotal stories from
33 cafeteria workers and from the teachers who say we know our kids are hungry, we know it
34 when they come in the building, we know it when they're at lunch, we see it before the end
35 of the school day when the bell rings, we know they are going home and they're going
36 home to tables where there's no food. And so, I think we have a tremendous responsibility
37 at this time to really show our community what we are really about because we have so
38 much affluence in this county. And so, we don't see it in the giving, you know, this give
39 where you live, we need to see it there. We need to see it across the street from the
40 County Executive's Office when he proposes some proactive ways to deal with this
41 growing issue, and of course, it's for all of us sitting here at this dais that we have to make
42 some really, really difficult decisions. And I would hope that--and on the back of what
43 Councilmember Trachtenberg just said, that there are things that we can do and we need



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1 to do it together and we need to do it with all of you here in this room. You know, I am not
2 that far out of poverty myself. I think about it all the time. People don't realize that, you
3 know, we all here sit at this table, some of us more fortunate than others, if you have a
4 spouse who is working. I don't. I'm a single mom. I have a child in college trying to make
5 those tuitions payments. When I took this job, I actually took a cut in pay because I made
6 more when I staffed the Councilmember then I do as a Councilmember. But by the grace
7 of God, you know, but by the grace of God go all of us, because, you know, lucky for me,
8 a few years ago I refinanced my mortgage and got a 30-year fixed rate. I didn't have that
9 before. So there's a lot of shame about struggling financially, and I know that. And so, we
10 take a lot of calls in our office from people who are just so embarrassed to tell friends and
11 neighbors that they need a helping hand. So I really want to thank you all very, very much
12 for keeping us, you know, where we need to be on this, to keep poverty in its proper
13 context because there are poor people that you and I might think don't look like they're
14 hurting, but they're hurting, and they are stressed out. You know, how am I going to make
15 the mortgage? Is my son going to get his tuition paid? How many people need to go to
16 work in our households? Do I need to take in a boarder? These are all the questions that
17 we know that friends and neighbors, you would be surprised how many people are out
18 there struggling. So whatever we can do here, I'm sure we're going to do it. So thank you.

19
20 MICHAEL KNAPP: Thank you.

21
22 NANCY FLOREEN: Thank you. I wanted to thank you all for your service and your
23 unending advocacy for the people that we don't see. It is so important and it's so important
24 for us to have this information. It's so important for us to know it costs \$72,000 a year to
25 get by in Montgomery County. People don't have a clue here. \$72,000, it's a lot of money.
26 17% of our children are in official poverty and that doesn't even include the numbers for
27 households and free and reduced lunch and all that. I think you gave us data three years
28 ago, 26% of county households had a median income below \$50,000. I can only imagine
29 how much larger that number is now or at least the number of families with income below
30 the self-sufficiency standard. Maybe, Linda, we can wrestle up more up-to-date
31 information, I don't know if we have it. It's dependent on the census, I guess.

32
33 BECKY WAGNER: The census a couple of years ago was of 138,000 people, over
34 900,000 people were living below that self-sufficiency number. But, of course, then, you
35 have to break it in households...

36
37 NANCY FLOREEN: Yeah. Right, but it's just so sobering. We are so lucky to have the
38 kinds of arguments we have here about luxury apartments in Bethesda for which we can
39 spend hours arguing about or height limits in Twinbrook or what else, ever else we've
40 argued about today.

41
42 MICHAEL KNAPP: I'll go through the list. Well, actually, the longer you go through the list,
43 the longer...



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1
2 NANCY FLOREEN: But, these data points are so very important and we do inform
3 everything we do. So, thank you for doing this. Make us pay attention to this with every
4 decision we make. Thank you.

5
6 MICHAEL KNAPP: Councilmember Berliner?

7
8 ROGER BERLINER: These are heartbreaking stories that you bring to our attention. Fifty
9 percent of women in shelters, homeless shelters at the first time, suicide up 50% over a
10 four-month period of time. I think this Council understands now, thanks to you, the difficult
11 work we have to do. Uma, I would ask you if you would develop an emergency safety net
12 budget. What would that look like? What would it look like for this county to meet those
13 needs so that we understand the nature of the choices that we have before us? We
14 understand it, we have savings plans to meet, we have budgets to cut and it is clear we're
15 going to have to make some significant reallocations. We will have to make the budget
16 work. We will have to make significant cuts. And we will have to look at places where we
17 have not gone before in order to meet this short-term imperative, a moral imperative. We
18 cannot afford to turn our backs on our people in this moment in time for an economic crisis
19 that was not of their making, and it's time to stop talking about CEO compensation and
20 start talking about the people that you represent. So I appreciate your recommendation,
21 that we make sure our Federal legislators know that when we're talking about a stimulus
22 plans which we will have with this new administration, the nature of that stimulus plan, the
23 needs of our people. But in the meantime, we need to get a real honest appraisal of what
24 it would take to meet these needs now here, for us, in partnership with you. I've shared
25 with my colleagues that I thought maybe we ought to come every Tuesday with a canned
26 good...

27
28 NANCY FLOREEN: We'll do.

29
30 MICHAEL KNAPP: Just one?

31
32 ROGER BERLINER: With the canned goods on our dais to remind everybody every week
33 those fifteen people that watch us. That this is an obligation of the community to make
34 sure that you have the food you need to take care of the people who are coming to you.
35 So, I will bring canned goods on Tuesday, and we will try and create a context where the
36 consciousness of our people is raised because that's all that needs to happen. People are
37 good people and we will respond, and your job has succeeded in raising our
38 consciousness. Our job now is to raise other people's consciousness to amplify your voice
39 and we will seek to do so. And with your help, we'll figure out a way to have an emergency
40 safety net plan in place. That would be my request.

41
42 MICHAEL KNAPP: Well, I would just conclude by saying, if you're going to be in the
43 middle of an economic downturn, Montgomery County is a good place to be because we



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1 actually have resources that we can avail ourselves of. There are many places in the
2 country much worse off than we are. And so, shame on us if we can't figure out how to
3 reallocate those resources in a way that meets people's needs which gets us to the
4 conversation we're going start having all this week as we go through our various budget
5 deliberations and committee. And next week is, we know things are not going to get vastly
6 better in the near term, and so I think we need to be careful about looking at our budget
7 reductions and kind of a one off approach. Find a little bit here, a little bit there, and to go,
8 I think as Roger points and points others have made is, we need a more systematic
9 approach and say what are our priorities. And what are the things that the government
10 looks to that our people look to government to provide. And there may be some nice
11 things out there that our community expects because we are a fairly well off place that we
12 may do less of and some things that we're going to have to do because we need to
13 provide that safety net. And those are not going to be easy choices, but that is the reality
14 that we going to be confronted with and I think we need to have a more systemic
15 approach as we look at budget reductions, and you guys are already very good at doing
16 this, but I would not hesitate to call us and continue to be our conscience, and when we
17 do something that doesn't appear to make sense, and it looks like we're going down that
18 road, call and let us know that. And that doesn't mean we're always going to agree,
19 because there [inaudible] not got to be easy decision that we are going to have before us.
20 But you know, beat us about the head and shoulders, and make sure we are paying
21 attention in the right place. I think that's going to worthwhile and I think we will collectively
22 get to an okay place. We're not going to be able to fix it for everybody but I think we can
23 certainly do our best to do all that we can for as many as we possibly can. So I thank you
24 for bringing this to our attention, to make sure that we do it and make sure that we get
25 everybody here. And I wish this were the last conversation we'll have on this, but we're
26 going to have many more in the coming months. But this is a great foundation for us to
27 move forward with. So thank you very much and thank you for all that you are doing and
28 we look forward to working with you to make sure we can address our community's needs.
29 Thanks.

30
31 MICHAEL KNAPP: Okay, almost there, gang. We've only got a couple more things to do
32 today and only a couple of little things, master plan and details. Yeah, well, we don't have
33 the promise or any other time to do it in the next week and the next three weeks, the
34 schedules are full, actually, probably longer. We have the transit station but that's a quick
35 one. And then we have the master plan, and this would be what we deal in the work
36 session already. So, what we turn back to now, Zoning text amendments, 08-06, the I-4
37 zone, transit station development areas, to find the right piece of paper here. Is that it?
38 Okay, thank you. On September 8th which feels like eons ago, the Committee
39 recommended the approval with ZTA 08-06, with the following amendments; only require
40 site plan approval for development that uses the special development standard applicable
41 on transit station development areas, that's clear to everybody. Allow reduced setback
42 that the Planning Board finds no adverse impact and clarify that more than one accessory
43 residential unit may be located on a lot. Let me go straight to the background real quick.



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1 This was sponsored by us at the request of the Planning Board, to accompany the
2 Twinbrook master plan, generally, that the ZTA would define an accessory residential unit,
3 allow an accessory residential unit as a permanent used in the I-4 zone, if the use is
4 located at transit station development area. Modify the special regulation of the I-4 to
5 address development in transit station development areas and generally amend the I-4
6 zone. Those are the basic pieces. I will turn to Mr. Zyontz to see if there's any more
7 information than that that people need to have provided.
8

9 JEFF ZYONTZ: Just so you know that this is part of the implementing zoning amendment
10 for the sector plan. There is a fair portion of the area that will be zoned I-4 if you adopt the
11 amendment. These are appropriate amendments, whether or not we go forward with the
12 master plan or not. And they are, believe it or not relatively simple compared to the TMX
13 changes we went through yesterday and this morning.
14

15 MICHAEL KNAPP: I will see if Councilmembers have issues? Councilmember Berliner
16 has a question or a statement?
17

18 ROGER BERLINER: I was going to move that we move forward, Mr. Chairman. I don't
19 believe there's any controversy with respect to this matter I don't believe -- I believe we
20 can go forward.
21

22 MICHAEL KNAPP: Further discussion on ZTA 08-06, seeing none, we have before us the
23 committee recommendation which is approval with amendments. Madam Clerk, seeing no
24 further discussion, if you would call the roll.
25

26 CLERK: Mr. Elrich?
27

28 MARC ERLICH: Yes.
29

30 CLERK: Mr. Praisner?
31

32 DONALD PRAISNER: Yes.
33

34 CLERK: Ms. Trachtenberg?
35

36 DUCHY TRACHTENBERG: Yes.
37

38 CLERK: Ms. Floreen?
39

40 NANCY FLOREEN: Yes.
41

42 CLERK: Mr. Berliner?
43



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1 ROGER BERLINER: Yes.

2
3 CLERK: Mr. Andrews?

4
5 PHIL ANDREWS: Yes.

6
7 CLERK: Ms. Ervin?

8
9 VALERIE ERVIN: Yes.

10
11 CLERK: Okay, and Mr. Knapp?

12
13 MICHAEL KNAPP: Yes, ZTA 08-06 passes, 8-0. And I would just note that Mr. Leventhal
14 is absent on other county business. And so we will follow back up with him later. That is
15 approved. Thank you very much. We now turn back to worksession on the Twinbrook
16 Sector Plan. We had an overview on the transportation piece two weeks ago which kind of
17 laid out those elements. And what we would do today after Ms. Michaelson walk us
18 through is to take a straw votes on any issues and then the Council would--those of us,
19 would give the staff time to prepare final documentation to come back before the full
20 council on December 9, I believe for final passage if that is the plan. And obviously go a
21 little bit longer because we extended that this morning to January 22 if necessary. But we
22 can probably get through before we go on recess. Ms. Michaelson.

23
24 MARLENE MICHAELSON: Okay, before I go through the packet, I just want to raise one
25 issue that has come up since the committee consideration. We did receive a request to
26 reconsider the boundaries of the Twinbrook Metro station policy area, to conform to this
27 sector plan, and Mr. Orlin and I recommended that that would be considered when the
28 growth policy is before you. So, I just wanted to give you a heads up and put that
29 recommendation on the record so that it can be considered at that time.

30
31 MICHAEL KNAPP: When the growth policy is before us?

32
33 MARLENE MICHAELSON: When the growth policy is before you because the Metro
34 station policy area boundaries are set in the growth policy. We don't think it is appropriate
35 to set it in the master plan, but to at least reference for your review that we will consider
36 that in that...

37
38 MICHAEL KNAPP: And the growth policy is scheduled to come back before us sometime
39 next year, 2009, so we can make the appropriate applications at that time, okay?

40
41 MARLENE MICHAELSON: Okay, you've already been through the overview on the plan
42 and I do want to tell you that many of the major issues here really came up in the TMX
43 zones. So, the plan issues itself I think are far easier than the zone. But turning to page



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1 two in the staff memo and I do have extra copies of the sector plan, if anyone would like
2 one. The Committee asked for information on the overall vision for Twinbrook and how
3 Twinbrook would differ from the other centers along the corridor. And the planning staff
4 provided a response attached on circle two to six that indicated a three-pronged approach
5 for this center as a mixed use center with housing closest to Metro, as a technology
6 employment center to serve the needs of the technology and bio-technology community,
7 and also as a center for light industrial uses. And the Committee concurred with that
8 overall view. And I'm just going to keep going as the--okay, and the Committee also asked
9 about jobs housing balance and how whether Twinbrook was being considered in the
10 context of the overall goals to try and reduce somewhat the JH ratio, the jobs-housing
11 ratio along the corridor. And this plan together with the preliminary numbers for
12 Germantown, Gaithersburg West, and White Flint will result in a slight decrease in the
13 jobs-housing ratio from 2.18 J-H ratio to 2.05 ratio, which is a 6% change in the direction
14 originally supported in the transportation policy report.

15
16 MICHAEL KNAPP: Meaning that we have more housing relative to the number of jobs.

17
18 MARLENE MICHAELSON: Exactly, exactly and the goal was to try and increase the
19 housing in the corridor or decrease jobs and to increase jobs in the eastern part of the
20 housing relative to have it. So, this is consistent.

21
22 MICHAEL KNAPP: This is through increasing housing density or it's a combination of the
23 two?

24
25 MARLENE MICHAELSON: It is a combination of the two. And the committee looked at the
26 specific mix of jobs and housing recommended in sector plan and generally supported the
27 goals, but as we get to the specific areas you'll see is recommending a requirement for a
28 minimum amount of residential development to ensure that the area achieves the planning
29 housing goals. And as the Committee went through they noted that a for the TMX series,
30 there are several areas that are recommended for 2.0 FAR with the first 1.5 FAR being
31 opened to be either the commercial or residential, and final 0.5 being required to be
32 residential and the majority of the Committee flipped that for the Metro station area to say
33 that 25% of any development should be residential to make sure that there is a residential
34 component to that is planned for in this area. And Councilmember Floreen preferred to
35 keep it open as was recommended in the original [inaudible]. Generally, densities for the
36 Twinbrook area, the plan in the TMX area, the densities range from 1.5 FAR to 2.0 FAR,
37 with the greatest heights closest to the Metro station. And the one recommendation that
38 the Committee made is that to change it is that the plan should more clearly delineate
39 densities with and without the housing bonuses for moderate priced dwelling units and
40 workforce housing, as had been done with prior plans. On building heights and this...

41
42 ROGER BERLINER: One question with respect to--the biggest employment center we
43 have in Twinbrook is the Parklawn building. What are we doing and I appreciate it--what



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1 are we doing to maximize the opportunities of retaining that as an employment center?
2 Because this just feels like this is so theoretical.

3
4 MARLENE MICHAELSON: Right, some of that is really going to be more oriented towards
5 economic development strategies. But what we did in the plan was we made sure the land
6 used regulations, the zoning, the density, and the grandfathering were all endorsed by the
7 property owner as enabling them to develop under any scenario they are currently
8 picturing to encourage the federal presence to remain. And so they were content with the
9 issues that are dealt with in the master plan, that the master plan had handled those right.
10 Clearly we're going to need to do more beyond that as a county, but I think we've done
11 what we can and in purview of the master plan.

12
13 JEFF ZYONTZ: We also made changes...

14
15 MICHAEL KNAPP: Are you asking for of this--you are asking specifically in the context of
16 the master plan?

17
18 ROGER BERLINER: Well, there actually was more but it was--I appreciate in the context
19 of that which is before us we have done as much as we can do. I certainly agree that we
20 need to do more as a county and had urged a meeting with GSA, face to face, et cetera,
21 that we ensure that we are fighting as hard as other communities appear to be fighting to
22 take it from us, that we are as fighting as hard as they are to retain it.

23
24 MICHAEL KNAPP: And I did not know if you have seen a copy of the letter that went from
25 the secretary and the Governor to the folks at Capitol Hill, and just basically saying how
26 moving the Parklawn building would run counter to what they want they say is trying to do
27 is treasuring development. And so, I mean, I think everyone is weighing in the right
28 direction to accomplish our objectives, but you are right, it's certainly something that we
29 should not let up on it. I don't think anyone is kind of thinking of applying some of the
30 reasons or some of the politics.

31
32 ROGER BERLINER: There are some politics involved?

33
34 DUCHY TRACHTENBERG: I would put some things on the table about the Park Line
35 space and future use of that space and re-development of that space, which is really what
36 needs to happen. There are significant issues in that building around safety, but more
37 important, environmental factors. It is what you would call a sick building. There are at
38 significant environmental problems in that building, and the federal government has been
39 aware of it for some time. So, one of the things they have done is they have in stages
40 moved employees out and they have actually staged it so many of them are now working
41 in other alternative county locations. So we have not lost the jobs or the employees yet.
42 And I do not think we are going to lose that much because really about 50 to 60% of them
43 have been located up county, up near in the Gaithersburg area in particular. And the



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1 reason I know this is that is I happen to be married to a federal physician, and he has
2 worked most of his career in that building although he is no longer there. And so what I
3 would suggest to you is that they are going to redesign and it could very well be that it still
4 would be appropriate, and I think it would be to house federal employees and we should
5 fight for it, but I just want to make it really clear that at some point that building needs to
6 come down anyway, and whoever is left is going to have to be relocated. So, that is more
7 the immediate decision.

8
9 MICHAEL KNAPP: All right, no further questions on this point? Drive on.

10
11 MARLENE

12
13 MICHAELSON: Moving on to building heights. As the Council knows we just approved the
14 TMX zone, which does not have any height limit in the optional method of development
15 with the idea that the master plan would set the height limit. However, we had a problem
16 in that the Twinbrook plan did not have height limits for a significant portion of the planning
17 area. And so what the Committee did is ask planning staff to go back and rewrite sections
18 of the plan to make sure that we had clear guidance on heights, especially in light of fact
19 that we did not have them in the zone. And that is attached at circle 29 to 30. They are
20 revisions to the plan that addressed the height issue and provide guidance for the entire
21 planning area, both the Metro core area and the technology employment area. Now, to get
22 on to some of the specific plan use recommendations, the Metro core area is the area
23 closest to the Metro and is likely considered to be the most likely location for residential
24 development, and this is where the Committee is now recommending that a minimum of
25 25% of the development be residential. This is going to be adjacent to development in the
26 city of Rockville that is primarily residential. And it is the area that the planning department
27 believes would be the greatest resource for housing. Otherwise, the committee supported
28 the zoning and the density recommendations for the Metro core area. For the technology
29 employment area the Committee also supports the land use zoning and density
30 recommendations, again a range of FAR from 1.5 to 2.0 and new guidance on the height
31 limitations. And it is in this area that the Parklawn property is located, and once again the
32 Committee did review this to ensure that the land and zoning recommendations were
33 consistent with any potential redevelopment plans for this property. The third area of land
34 use is the light industrial area. This is the area that is recommended to be I-4 and the
35 Committee spent some time examining what the county wide supplies of I-4 land and
36 whether the recommendations were appropriate. They agreed with the planning Board
37 recommendation to retain this important I-4 resource and did not believe it should be
38 diminished at all and also supported the Planning Board's recommendations for modest
39 change generally for I-4 to in between the next zone. Because there was no language in
40 the sector plan describing the rationale for the change in zoning, the Committee asked
41 that that be added, and that appears on the bottom of page 7 of the memo that provides
42 you with the rationale for the zoning change that's recommended. Moving on to page 8, in
43 the in the health line properties the committee received or the Council received request to



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1 change the boundaries of the sector plan to include properties that were not in the
2 Planning Board's draft, and many thought it was too late to do that and that new properties
3 should not be added at this point in the process. The Committee also looked at the
4 community facilities planned, and generally supported the communities facilities planned
5 that is in the sector plan, but recommended the leading the list of currently programs
6 programmed CIP projects. That is something we do not typically include in the master
7 plan or sector plan because that becomes out of date very quickly. However, it did very
8 strongly endorsed having a list of future CIP projects that would be needed for the area
9 and that would provide a good basis for both the planning Board to track CIP
10 implementation in the County Executive as he develops the CIP in the future to make sure
11 that they're tracking what needs to be done. And also, the Committee recommended
12 leading references to private need list, the plan included some references as to how parks
13 should be maintained and private maintenance to certain parks. Again that is beyond the
14 purview of typically what we deal within in the master plan and the maintenance issues
15 should it be dealt with at a future point in time. On the amenities issue, the amenities
16 recommended in the sector plan, appears on pages 26-29, and the Committee did support
17 that list of amenities and believe they are appropriate for the transition of the areas from
18 one that is primarily commercial to a mix of commercial and residential. Finally, on the
19 historic designation, because the introduction to the plan did not properly reference that it
20 was an amendment to the historic preservation master plan, it was staff's determination
21 that we could not in fact look at the historic recommendation and that needs to be done in
22 another context where we have proper advertising. And in a record short amount of time,
23 that is the entire Twinbrook sector plan.

24
25 MICHAEL KNAPP: Well done, Council Member Berliner.

26
27 ROGER BERLINER: In reviewing some of the comments that have been filed with the
28 planning department and the responses thereto, I noticed a number of people that were
29 focused on the pedestrian aspects of it, the bicycling aspects of it, making sure that the
30 transit center itself it is such that it actively promotes our pedestrians and bicyclists and
31 more recreational facilities. The response to those concerns are that the master plan does
32 that. Would you give a little more expression to that, particularly with respect to the open
33 green space in the midst of this? Have you concluded that there needs to be any open
34 green space, and if so, are there particular places that you anticipate there will be open
35 green space? Can you point to them if they exist or is this just a generalized requirement?

36
37 JOHN CARTER: Well, it's both; so, let me start with the last one with the parks. There are
38 two parks, designated additional parks, and I hate to mention it, but this is the TMX zones
39 that has requirements along these lines, as 20% public use space. And you can do that on
40 site, you can't aggregate with others, or you can fund it as well, as long as you have
41 something specific. So, what Marlene was talking about earlier, there's a list of amenities,
42 some of those are parks, some of those are pedestrian pathways, better connections to
43 the Metro stations. So, the parks with the asterisks there, that Kristen was showing, the



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1 Twinbrook plan, and I think it's the other side as well; I wanted to give you a visualization
2 of what that looks like. Will you just turn that over? Yes, there it is. The bottom left there is
3 right at the Metro station. So It is not large recreation fields. But the plan has these three
4 parks designated, and then there will be more open space provided to the project plan
5 system mentioned that you have in the TMX zone. Then the key aspect is there is a bike
6 way and a pedestrian network that's in the plan. Part of the main part of that is they get
7 you connected up to Veirs Mill where the local park is, which is just a very short way.
8 There's a pathway connection, that's where your large fields are. There's also a recreation
9 center, be it in the city of Rockville, but it certainly will be used by constituents here, which
10 is a little bit up the Twinbrook parkway.

11
12 PHIL ANDREWS: You're gonna make sure they use...

13
14 JOHN CARTER: Yes. So, there you have it in preview. So, interested pedestrians still
15 say...

16
17 ROGER BERLINER: You feel comfortable and the community feels comfortable that we
18 have provided sufficient public amenities, sufficient open spaces, sufficient pedestrian
19 access and certainly that representation suggests as much.

20
21 MARLENE MICHAELSON: Yeah, and this plan is very clear on page 28, for this we have
22 it, it does have a list of specific, pedestrian locations and in fact it got this entire list of
23 amenities, either pedestrian or park related.

24
25 ROGER BERLINER: Thank you, thank you, Council President, that's all I wanted to
26 confirm with them.

27
28 MICHAEL KNAPP: Excellent, okay, Councilmember Elrich.

29
30 MARC ELRICH: And do all these goodies have a greater status and so would be
31 recommended as design guidelines?

32
33 JOHN CARTER: Well, these are actually in the plan, so they're not just the design
34 guidelines. They are actually in the plan so it has a greater status.

35
36 JEFF ZYONTZ: And by the zone you pass that the design guidelines must implement the
37 recommendations of the planner.

38
39 MARC ELRICH: I thought so earlier this afternoon as well and apparently this zoning
40 guidelines don't mean anything.

41
42 MARLENE MICHAELSON: When a project plan comes before the planning Board, they
43 required to consider the amenities and they'll look to the sector plan or master plan to see



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1 what amenities are recommended. But they will of course also see whether circumstances
2 have changed and so I think when you have a list of amenities in a plan, generally we
3 don't write it to say this are exactly what needs to be filled. Whether or not we do that with
4 other standards I know it's a subject of debate but with amenities we try to provide
5 guidance and then the Planning Board assesses that with the staff's help to see whether
6 those are currently the ones that still makes sense depending when the development
7 occurs.

8
9 MARC ELRICH: I consider and continue to be very concerned that we're actually going to
10 produce on the ground what we're telling people what we're going to do and how much of
11 what we put up here in drawings, is simply suggested that and people basically can do
12 whatever they want regardless of what...

13
14 MICHAEL KNAPP: It's in the plan, it's not suggested and it's recommended, so...

15
16 MARC ELRICH: Can you be sure in the future that everything including design is going
17 into the plan as opposed to some bizarre appendix that apparently has no weight.

18
19 MICHAEL KNAPP: So many comments, so little time.

20
21 MARC ELRICH: I wanted to make sure I had made my point.

22
23 MICHAEL KNAPP: Just in case it wasn't there earlier, yes, duly noted, that's okay. Okay, I
24 just wanted to commend the Planning Board and their staff for their efforts into the first
25 master plan we've had in quite some time. This kind of breaks the log jam and we start to
26 see a number of them coming over the course of the next year. I think it was a good one
27 for everybody to kind of cut their teeth on. I think and I know that the Chair was frustrated
28 with the conversation earlier in the day. Otherwise I do think we did make progress in the
29 direction that he and the Planning Board are trying to kind of move us to, it may be more
30 incremental and perhaps others would like to see, but I still think it progress and I
31 appreciate everyone's efforts to get us down there because we are at a different point in
32 our county. And we need to start thinking about how we begin to develop differently, and
33 that is not going to be something that we can do overnight, but I think it's important for us
34 to start to engage right now and I think we have. With that, we have before us just a straw
35 vote on the overall Twinbrook sector plan and that all we need to do is a show of hands,
36 so, the staff has the right direction. So, all in support of the Twinbrook sector plan as
37 proposed or recommended by the Committee indicate by raising your hand. I see
38 everybody's hands up they're here, I appreciate that, that gives staff the guidance and I
39 again thank everyone for their efforts. And we will see everybody back there on this issue
40 on December 9.